

Exhibit 12

NPDES DISCHARGES INTO PENOBSCOT RIVER WATERSHED

Prepared by Penobscot Nation Department of Natural Resources (2-25-00)
If there are corrections to this list we request that EPA inform the Tribe.

DISCHARGES DIRECTLY INTO UNDISPUTED RESERVATION WATERS

Penobscot River Reservation

MAJOR	ME0101796	Lincoln POTW (Municipal)
MAJOR	ME0002003	Lincoln Pulp and Paper
Minor	ME0101788	Howland POTW (Municipal)
Minor	ME0102245	Mattawamkeag POTW (Municipal)
Minor	ME0023213	Indec/Babcock Ultrapower West Enfield
Minor	ME0023388	Bangor Hydro in West Enfield
Minor	ME0023078	Beaver Wood Joint Venture (may have closed)
Minor	ME0101311	Indian Island POTW (Municipal)

DISCHARGES AFFECTING PENOBSCOT INDIAN TERRITORY WATERS AND RESOURCES *

Penobscot River, west branch

MAJOR	ME0000167	Great Northern in Millinocket (formerly Bowater)
MAJOR	ME0000175	Great Northern in East Millinocket (formerly Bowater)
MAJOR	ME0100803	Millinocket POTW (Municipal)
-	ME0100196	East Millinocket POTW (Municipal - now combined with GNP)

Mattawamkeag River and Tributaries

Minor	ME ?	Island Falls Starch Co. (lack current information)
Minor	ME0000205	Patten POTW (Municipal - Fish Stream)
Minor	ME0100161	Danforth POTW (Municipal - Baskahegan Stream)
Minor	ME ?	Sherman POTW (Municipal - lack current information)
Minor	ME0023191	Wheelabrator - Sherman Energy

Small Tributaries to Penobscot River upstream of Indian Island

Minor	ME0001104	MDIFW/ Cobb State Fish Hatchery (Cold Stream)
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Minor	ME0022055	Champion International in Costigan (Costigan Creek tributary)
Minor	ME0022730	Haskell Lumber Inc in Lincoln (Combolasse Stream?)
Minor	ME0022551	Currie and Casino oil in Lincoln (Mattanawcook Stream tributary)

Piscataquis River and Tributaries

MAJOR	ME0102032	Guilford-Sangerville POTW (Municipal)
-	ME0001902	Guilford of Maine (now combined with GSSD POTW)
-	ME0100501	Dover-Foxcroft POTW (Municipal – to Piscataquis)
Minor	ME0100439	Milo POTW (Municipal – to Piscataquis)
Minor	ME0100099	Brownville POTW (Municipal - to Pleasant River)
Minor	ME0110167	New England Fish Farming
Minor	ME0090182	Charlestown US AF Station
Minor	ME0022799	River Bend Apartment Associate (to Pleasant River)
Minor	ME0022101	Moosehead Manufacturing (to Piscataquis)

DISCHARGES AFFECTING PENOBSCOT INDIAN TERRITORY RESOURCES

Penobscot River Downstream of Reservation

Minor	ME0001678	Bangor Hydro in Milford
Minor	ME0021504	Bangor Hydro in Veazie
Minor	ME0001651	Veazie Hydro-Electric Co.
MAJOR	ME0002020	Fort James/James R. Paper mill
MAJOR	ME0100471	Old Town POTW (Municipal)
MAJOR	ME0100498	Orono POTW (Municipal)
Minor	ME0100706	Veazie POTW (Municipal)
Minor	ME-0021504	Casco Bay Energy Corp (was Bang Hydro)
MAJOR	ME0100072	Brewer POTW (Municipal)
-	ME0000086	Eastern Fine Paper, Inc (now discharges to Brewer POTW)
MAJOR	ME0100781	Bangor POTW (Municipal)
MAJOR	ME0000639	Hotrachim (formerly LCP chemicals)
MAJOR	ME0002160	Champion International paper co in Bucksport
MAJOR	ME0100111	Bucksport POTW (Municipal)
Minor	ME0002186	C.H. Sprague and Son in Bucksport
Minor	ME0022829	C.H. Sprague & Son Company
Minor	ME0022322	Cumberland Farms, Inc
Minor	ME0100382	Fort Knox Historic Site
Minor	ME0020273	Getchell Brothers Inc
Minor	ME0023647	Harriman Cove Cogeneration Plant
Minor	ME0022004	Mainway Terminal Corp
Minor	ME0000477	Mobil Bangor Terminal

Minor	ME0023230	Penobscot Energy Recovery Co
Minor	ME0002330	Defense Fuel Supply Center
Minor	ME0022225	Webber Oil Co.
Minor	ME0001457	Webber Tanks, Inc
Minor	ME0100749	Winterport POTW (Municipal)

Tributaries to Penobscot River Downstream of Reservation

Minor	ME0102296	Old Town Drinking Water (Stillwater River)
Minor	ME0001686	Bangor Hydro-Veazie (to Stillwater River)
Minor	ME0002437	USFW/Craig Brook Hatchery (Alamoosook Lake)
Minor	ME0002267	Coldbrook Energy, Inc (Souadabscook Stream tributary)
Minor	ME0023043	Penobscot Frozen Foods (Passsagassawakeag River estuary)

*The Penobscot Nation does not distinguish between the mainstem and branches of the Penobscot River with regard to its reservation. The State of Maine and industrial users of the Penobscot River's west branch disagree with the Nation's understanding. By listing discharges within the Penobscot River's branches separately from the "undisputed" reservation, the Nation does not waive its claim that its reservation encompasses the branches of the river.

Exhibit 13

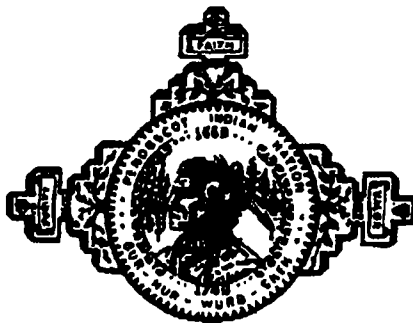
DNR Copy

Office of the Governor and Council

Richard H. Hamilton
Governor

Arnold E. Neptune
Lt. Governor

Paul Bisulca
Representative



Community Building
Indian Island
Old Town, Maine 04468
(207) 827-7776
FAX (207) 827-8042

February 29, 1996

Mr. John DeVillars, Regional Administrator
U.S. EPA
Region I
JFK Federal Building
Boston, MA 02203

RE: Water Quality Standards to Protect the Penobscot Indian Reservation

Dear Mr. DeVillars:

The Penobscot Nation hereby requests that USEPA begin the process to establish Federally promulgated water quality standards that adequately protect the Penobscot Indian Reservation.

It is quite clear to us that the State of Maine is not willing, or able, to establish and enforce standards in a manner that adequately protects Penobscot Reservation waters and the associated natural resources. Therefore, we are forced to call upon the federal government, in concert with your Trust Responsibility, to step in and establish a set of standards that are protective of the Penobscot Indian Reservation.

Of particular concern is the fact that the State of Maine has chosen not to adopt a standard for certain organo-chlorides that are discharged directly into Reservation waters and contribute to the toxic contamination of fish, resulting in a health advisory being issued. This contamination prevents the members of my tribe from fully utilizing our reserved fishing rights.

I feel that the responsibility to insure that our treaty fishing rights are protected, rests ultimately with the U.S. Government and USEPA.

It is my understanding that EPA headquarters in Washington D.C. is also very interested in speeding up the process for establishing adequate water quality standards on federally recognized Indian Reservations. Therefore, I feel that this request is very much in line with EPA's Indian Policy.

I look forward to your response to this important request and to working closely with your office as this matter moves forward. Thank you very much for your time and your continued support of tribal issues.

Sincerely,



Richard Hamilton, Governor
Penobscot Nation

cc: Terrence Williams, AIEO
James Sappier, RIPC (Region I)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

**JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001**

May 31, 1996

**Honorable Richard Hamilton
Penobscot Nation
Community Building
Indian Island
Old Town, ME 04468**

**OFFICE OF THE
REGIONAL ADMINISTRATOR**

Dear Governor Hamilton:

This is in response to your letter of February 29, 1996 requesting that EPA begin the process of establishing federally promulgated water quality criteria for certain organochlorides which contribute to the contamination of fish in the Penobscot River and result in a health advisory.

I share your goal of reducing the level of toxics in fish so that they may be consumed safely without the need for a health advisory. I believe the most promising approach to achieving our mutual objective is through thoughtfully applying the current standards, carefully permitting sources, consistently monitoring fish tissue as controls are implemented, and adjusting those controls accordingly as we learn more from fish tissue monitoring. This strategy will be most successful if we enlist the cooperation of all of the stakeholders in the watershed. Through this type of an effort, we should strive for elimination of the fish advisory as soon as possible.

The organochloride causing a fish advisory in the Penobscot River is dioxin. In 1990, Maine amended its water quality statute to require that EPA's national criterion for dioxin would apply in Maine if the Maine Board of Environmental Protection failed to adopt its own criterion by June 1991. The Board did not adopt an alternative dioxin criterion, nor did it select a cancer risk level for applying EPA's criterion. In 1993, Maine amended its water quality statute to prohibit the Board from adopting any numeric water quality criterion for, or setting a cancer risk level from exposure to, dioxin prior to January 1994. The Board has not yet adopted its own alternative dioxin criterion nor has it selected a risk level for implementing EPA's dioxin criterion.

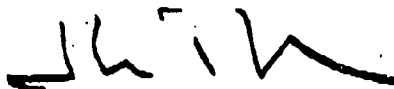
EPA interprets the current Maine water quality statute to mean that a state dioxin criterion based on EPA's national criterion remains in effect, but there is no risk level established by the State for dioxin. In the absence of an explicit risk level designation, but in consideration of other provisions of the Maine standards, EPA generally implements the state dioxin criterion using a 10^{-6} level of risk (one in a million risk of an additional cancer). When this risk level is factored in with the other elements of EPA's dioxin criterion that are in effect in Maine, this yields an in-stream dioxin level of 0.013ppq. In the case of the Lincoln Pulp and Paper draft permit, EPA proposed to establish an effluent limit for dioxin based on an ambient concentration of dioxin of 0.0078 ppq. This concentration reflects a risk level that takes into account that the 50th percentile level of fish consumption in the tribe is greater than the 50th percentile level of fish consumption in the general population.

We believe that the current dioxin criterion which applies in Maine is capable of being implemented in the individual permitting context to protect the uses, including fish consumption, of the waters affecting the Penobscot Indian Nation's reservation. Prior to making a final decision on the Lincoln Pulp and Paper permit, EPA will carefully evaluate the impact of permitted dioxin levels on the tribe and respond to comments we have received from the tribe, including those regarding fish consumption levels, and other parties on this issue.

EPA expects to receive a final biological opinion on the effects of the proposed reissuance of the Lincoln Pulp and Paper NPDES permit on the threatened bald eagle from the U.S. Fish and Wildlife Service within the next two months. Once we receive the opinion, we plan to issue a final discharge permit within several months. The permit will include provisions designed to address the tribe's fishing rights and the fish consumption advisory problem. We believe that the most efficient and effective way to address the tribe's concern at this time is through the permit process, rather than through a separate federal promulgation of a dioxin criterion. Promulgation of a dioxin criterion for waters adjacent to the Penobscot reservation would not necessarily yield different or more stringent effluent limitations for the Lincoln Mill as would an effluent limit based on EPA's implementation of the current Maine criterion, yet promulgation would require a longer and more resource-intensive administrative process. Therefore, EPA intends to continue to focus its attention on completing the Lincoln permit at this time.

As you may be aware, the state of Maine has recently expressed interest in examining its dioxin criterion. EPA is ready to work with the tribe and DEP to develop a sound long-term strategy for dealing with dioxin in the Penobscot. I share your goal of reducing the levels of toxics in fish so that there is no need for a health advisory. I look forward to working with you to achieve this objective as soon as possible.

Sincerely,



John P. DeVillars
Regional Administrator

cc: Edward Sullivan, Maine DEP
Joseph Torres, Lincoln Pulp and Paper
Michael Bartlett, US Fish and Wildlife Service

Governor

I look forward to
meeting with you, the
Banks, Commissioner Sullivan
and others on this issue
- this the next 6-8
weeks.



Office of the Chief and Council
Richard H. Hamilton
Chief

Ann I. Pardilla
Sub-Chief

Donna M. Loring
Representative



Community Building
Indian Island, Maine 04468
(207) 827-7776

FAX (207) 827-6042

December 9, 1999

**Via Telefacsimile (617 918-1505)
and First Class Mail**
Ronald G. Manfredonia, Chief
Water Quality Branch
United States Environmental Protection Agency
Region I
J.F. Kennedy Federal Building
Boston, MA. 02203-2211

Dear Mr. Manfredonia:

This is to request that the United States Environmental Protection Agency promulgate water quality standards for the Penobscot River within the Penobscot Indian Reservation and administer related Clean Water Act ("CWA") programs within that portion of the river. *See, e.g.,* 40 C.F.R. 123.1(h) (EPA to run CWA's NPDES program where state lacks jurisdiction in Indian country); 33 U.S.C. §1341(a)(1) (same regarding CWA's section 401 certification).

The reasons for this request are: (a) the State of Maine does not have federally approved water quality standards in place for the Penobscot River within the Penobscot Indian Reservation; (b) even if the State of Maine sought federal approval for such water quality standards in the Penobscot Indian Reservation, it would not have adequate jurisdiction; (c) the Penobscot Nation has not yet established its own standards under federal law; and (d) the United States, not the State of Maine, has a trust obligation to protect and preserve the Penobscot Nation, its reservation, and attendant sustenance fishing rights from the activities of non-Indians within the reservation.

The State of Maine has, in the past, failed to enforce its environmental laws with regard to non-Indian activities affecting waters of the Penobscot Nation. See attached correspondence.

Thank you for your immediate attention to this.

Sincerely,

Richard M. Hamilton

cc: John Banks, Natural Resources Director
Mark Chavaree, Esq.
James Sappier, USEPA, Region I
Kathy Gorospe, American Indian Environmental Office
Kevin Gover, Assistant Secretary, Indian Affairs
Edward Cohen, Deputy Solicitor, Indian Affairs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

April 22, 1993

Dean C. Marriott, Commissioner
Maine Department of
Environmental Protection
State House Station 17
Augusta ME 04333

RE: Penobscot Mills Project, L-17166-33-A-N
Draft Water Quality Certification
FERC Docket #2458

Dear Commissioner Marriott:

We have reviewed the draft Penobscot Mills Water Quality Certification dated March 31, 1993 in which the State expressly waives its authority to certify that the back channel of the West Branch of the Penobscot River will meet applicable water quality standards.

Under Maine's water quality standards, the West Branch of the Penobscot River "from the outlet of Ferguson and Quakish Lakes to its confluence with the East Branch of the Penobscot River, including all impoundments," is designated Class C (38 MRSa §467(7)(C)(1)(f)). It is clear that this segment of the river includes the bypassed reach of the West Branch below Stone Dam known as the "back channel." Our position is supported by the draft water quality certification which states, "the Department concludes that the Back Channel must be suitable for all designated uses and must meet applicable aquatic life criteria" (p.16). That the back channel is a classified reach of the river is also consistent with earlier statements made by the Department of Environmental Protection (DEP), in particular, a letter dated October 9, 1991 from Stephen Groves, Director, Bureau of Water Quality Control, DEP to Jim Carson, Georgia Pacific.

Water quality standards for Class C waters require that discharges "support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community" (38 MRSa §465(4)(C)). The license application states that the "Back Channel has a sparse fish population and does not support coldwater species with current flow management" (Great Northern Paper Application to the Federal Energy Regulatory Commission ("FERC"), E3.1-51). It is EPA's opinion that at leakage flows, the back channel does not comply with Maine's water quality standards for Class C waters. Maine's 1992 305(b) report confirms that the back channel does not meet the aquatic life standard of its classification (State of Maine 1992 Water Quality Assessment, Appendix I, p.36). The U. S. Fish and Wildlife Service and the Maine Department of Inland Fisheries and Wildlife have indicated that with adequate flows, the back



channel could provide fisheries habitat for coldwater species. Instream flow studies conducted by the applicant show that flows between 350 and 500 cubic feet per second will provide habitat for juvenile salmon, a target lifestage. Hence, in our opinion, in this case, the State should either apply appropriate conditions to the certification to assure that applicable water quality standards are attained, deny certification, or follow the federal procedures, including preparation of a use attainability analysis, for designating a subcategory of the present classification.

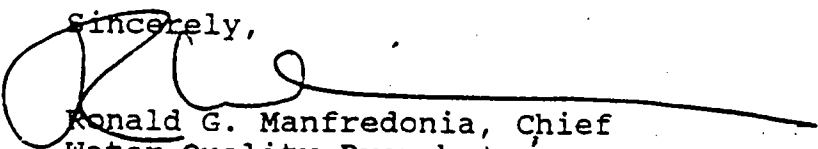
As you know, over the past few years, EPA has had to take action in several cases to ensure that there would be meaningful water quality standard evaluations for hydroelectric projects that were in the process of obtaining license renewals from FERC. These hydroelectric projects are issued operating licenses only once every 30 to 50 years and we therefore continue to believe that it is critical for the State to evaluate whether modifications can be made to the project that would enhance or restore water quality and habitat.

We believe that a decision to waive water quality certification for the back channel would represent a failure on the part of the DEP to ensure that this particular project complies with applicable State water quality standards. We therefore urge the DEP not to waive certification in this case but to either condition the certification to meet water quality standards, deny certification, or follow the federal procedures for designating a subcategory of the present classification.

EPA provides the DEP with federal funding for a variety of water quality activities under the Clean Water Act based in part on the assumption that the DEP will responsibly fulfill its obligations under that Statute. By waiving its Section 401 certification authority in this case, we do not believe that the DEP would be responsibly fulfilling its obligations under the Clean Water Act. We are therefore exploring all the legal and policy options open to the Agency should the DEP decide to move forward on this draft certification waiver for the back channel.

In light of the gravity of the matter, we believe a meeting between EPA and the State in the near future would be advisable. If you have any questions or wish to schedule a meeting, please call me at (617) 565-3531, David Turin of my staff at (617) 565-3543 or Tonia Bandrowicz of the Office of Regional Council at (617) 565-3316.

Sincerely,



Ronald G. Manfredonia, Chief
Water Quality Branch

cc: Attached Service List

PENOBSCOT MILLS HYDROELECTRIC PROJECT - FERC Docket No. 2458
Great Northern Paper, Inc.

SERVICE LIST

Dean Shumway, Director
Division of Project Review
Office of Hydropower Licensing
Federal Energy Regulatory
Commission
825 North Capital Street, N.E.
Washington DC 20426

James Carson, Esq.
Special Projects Administrator
Great Northern Paper Company
Engineering and Research Bldg
One Katahdin Ave
Millinocket ME 04462

Richard H. Silkman, Director
Maine State Planning Office
State House Station 38
Augusta ME 04333

Dana Murch
Hydropower Coordinator
Dept. Environmental Protection
State House Station 17
Augusta ME 04333

Barry Mower
Dept. Environmental Protection
State House Station 17
Augusta ME 04333

Mr. Steve Timpano
ME Dept. of Inland
Fisheries and Wildlife
284 State St
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Augusta ME 04333

James Epstein
Deputy Regional Solicitor
US Dept. of Interior
One Gateway Center, Suite 612
Newton Corner MA 02158-2868

Gordon Russell
US Fish and Wildlife Service
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Old Town ME 04468

Clem Fay
Penobscot Nation
Department of Natural Resources
6 River Road
Old Town ME 04468

Tonia D. Bandrowicz
Office of Regional Council
U.S. EPA - Region I (RCW)
JFK Federal Building
Boston MA 02203

Stephen W. Groves, Director
Bureau of Water Quality Control
Dept. Environmental Protection
State House Station 17
Augusta ME 04333
ME DEP

Tim Glidden
Office of Policy and Analysis
State House, No. 13
Augusta, ME 04333

Mr. Tom Harnett
Office of the Attorney General
State House Station 6
Augusta ME 04333

Randy Hill,
U.S. EPA - Headquarters
401 M st. SW,
Washington DC 20460
mailcode LE-132W

Dean A. Beaupain
4 Hill Street
Millinocket, ME 04462



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

February 4, 2000

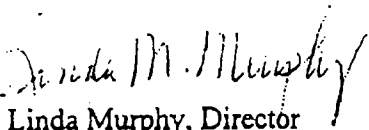
Richard Hamilton, Chief
Penobscot Indian Nation
6 River Road
Indian Island Reservation
Old Town, ME 04468

Dear Chief Hamilton:

This letter is to acknowledge receipt of your letter dated December 9, 1999, addressed to Ronald Manfredonia, concerning your request that the U.S. Environmental Protection Agency promulgate water quality standards and administer related Clean Water Act programs for the Penobscot Nation's reservation. This request raises the question whether, under the Clean Water Act (CWA) and the Maine Indian Claims Settlement Act (MICSA), EPA may retain authority to promulgate federal water quality standards on behalf of Indian tribes in Indian country in Maine.

As you may know, your request implicates many of the same issues as the application from the State of Maine for authorization to administer the National Pollution Discharge Elimination System (NPDES) permitting program under the CWA in Maine including Indian country within the State. We are currently considering these issues with reference to the Maine application. We are consulting closely with the Department of Interior and are in the midst of consultation with the Maine tribes, including the Penobscot Nation. We will fully consider your request that we promulgate water quality standards for your reservation and administer related Clean Water Act programs within your reservation. Please contact us if you would like EPA to treat your December 9, 1999 letter as a comment on the record for Maine's NPDES program application. When we have made a determination as to MICSA's effect on EPA's authority to promulgate water quality standards in Maine Indian country, we will continue to consult with you, as appropriate, to decide a course of action concerning the applicable water quality standards in your reservation.

Sincerely,


Linda Murphy, Director
Office of Ecosystems Protection

cc: John Banks, Natural Resources Director (PIN)
Kathy Gorospe, American Indian Environmental Office (EPA)

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Exhibit 14



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20243

IN REPLY REFER TO:

APR -8 1994

Ms. Carol M. Browner
Administrator
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Administrator Browner:

I am writing to express my strong concern regarding the possible issuance of a National Pollutant Discharge Elimination System Permit (NPDES) under the Clean Water Act (33 U.S.C. § 1342) to Lincoln Pulp and Paper Company, Inc. (Lincoln) to discharge into the waters of the Penobscot River in Maine. Lincoln is engaged in the manufacture of kraft pulp, fine paper and tissue. It has applied to the Environmental Protection Agency (EPA) for reissuance of its NPDES permit to discharge treated process wastewater, non-contact cooling water and storm water runoff into the river. It is my understanding that this permit is under review by Region 1 of the EPA, for possible issuance this spring.

The Penobscot Indian Nation (Nation) is a federally recognized Indian Tribe, whose reservation consists of islands in the Penobscot River. Numerous reservation islands, including the Nation's main community at Indian Island, are located downstream of the Lincoln discharge point, and are thus directly impacted by the Lincoln discharge. For centuries, tribal members have relied upon the resources of the Penobscot riverine environment for subsistence and for religious and ceremonial purposes. Most particularly, this reliance has depended upon the taking and eating of fish from the river, and the gathering of plant material from the islands.

Recognition of the Nation's fishing rights was included in historical agreements and communications between the Nation and colonial and state governments. Confirmation of the right to take fish for individual sustenance within the boundaries of the reservation is a specific component of the 1980 Maine Indian Claims Settlement Act. (See The Maine Implementing Act, 30 M.R.S.A. §6201, et seq., as confirmed by the Maine Indian Claims Settlement Act, 25 U.S.C. §1721, et seq.). The Nation thus has a protected right to the fish in the Penobscot River within the boundaries of its reservation. This right demands that there be sufficient fish to take and that such fish be safe to eat. United States v. State of Washington - Phase II, 506 F. Supp. 107, 203 (W.D. Wash. 1980), aff'd in part and rev'd in part, 694 F.2d 1374 (9th Cir. 1982),

Ms. Carol M. Browner
Administrator
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vacated, opinion replaced on rehearing en banc, 759 F.2d 1353 (9th Cir. 1985), cert. denied, 474 U.S. 994 (1985); See e.g., Kittitas Reclamation District v. Sunnyside Valley Irrigation District, 763 F.2d 1032, 1033-34 (9th Cir. 1985) (Treaty reservation of fish implies reservation of sufficient flows to prevent salmon "redds" or nests from exposure to air); United States v. Anderson, 736 F.2d 1358 (9th Cir. 1984) (Court required non-Indians to maintain minimum stream flows necessary for survival of tribal fishery.)

Discharge from the Lincoln Plant includes 2,3,7,8 tetrachlorodibenzo-p-dioxin (dioxin). The Penobscot River is listed on Maine's Clean Water Act Section 304(1) list of water bodies not attaining state water quality standards due to the point source discharge from Lincoln, and the presence of dioxin in that discharge. Low doses of dioxin are known to produce toxic effects, including cancer incidences and deleterious reproductive consequences, in laboratory animals. The State of Maine has already declared a fish consumption advisory for the stretch of the Penobscot River below the Lincoln discharge point. This advisory warns potential fish consumers that no more than two (eight ounce) meals of fish should be eaten each month, and that pregnant women and nursing mothers should avoid eating any fish taken from this stretch of the river. Since the stretch of the river subject to the fish consumption advisory corresponds to the Nation's prime fishing area, its fishing rights are detrimentally impacted by the Lincoln discharge.

As you know, any federal government action, including action by the EPA, is subject to the United States' fiduciary responsibilities toward Indian Tribes. Nance v. Environmental Protection Agency, 645 F.2d 701, 711 (9th Cir. 1981), cert. denied, 454 U.S. 1081 (1981). The federal government has charged itself with moral obligations of the highest responsibility and trust such that, in dealing with Indian Tribes, it is judged by the most exacting fiduciary standards. Seminole Nation v. United States, 316 U.S. 286, 297 (1942). Federal actions which reduce the quantity of fish present in reservation waters, either by adverse impacts to water quality or fish habitat, have been considered a breach of the federal government's trust responsibility towards Indians. Northwest Indian Cemetery Protective Association v. Peterson, 565 F. Supp. 586, 605 (N.D. Calif. 1983), 764 F.2d 581 (9th Cir. 1985). Federal agencies must ensure that environmental degradation, such as exists on the Penobscot River, not be allowed to impair the Nation's fishing rights. See, United States v. Washington - Phase II, 506 F. Supp. at 204.

Ms. Carol M. Browner
Administrator
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The Ninth Circuit in Nance required that EPA fulfill its trust responsibility both procedurally and substantively. Thus, while offering a tribe the opportunity to comment on a proposed action may fulfill the procedural responsibility, only by substantively addressing those comments can EPA completely fulfill its fiduciary duties. Here, the Nation has commented extensively on the proposed NPDES permit, voicing serious concerns with the discharge and resulting impacts to the health of tribal members and to fish. To discharge its trust responsibility, EPA must address those concerns.

In its comments, the Nation has emphasized numerous points, of which I will reiterate only a few. First, the Nation urges EPA to mandate establishment of a chlorine-free process at the Lincoln plant to be phased in over a seven year period. Second, the Nation demands that the risk level for dioxin provide adequate protection to members of the Nation, considering in particular the higher rates for fish consumption applicable to tribal members who traditionally have depended on fish for sustenance. Further, EPA's proposed detection limit does not guarantee compliance with the proposed instream standard, which will allow a higher level of dioxin in the water than would be permitted in the draft permit.

Your Pollution Prevention Policy encourages the utilization of EPA's permitting programs to achieve pollution prevention and source reduction. (See June 15, 1993, Memorandum from the Administrator, EPA, p. 4) Despite this initiative, however, the draft permit proposes to increase effluent limits through an increase in production of bleached kraft pulp. Authorization of increased effluent limits would appear to contradict your policy. Further, I am concerned that the production increase will result in higher levels of dioxin in the river, with further detrimental impacts on tribal health and natural resources.

Finally, I wish to point out that President Clinton's recent Executive Order regarding environmental justice should be applied to this permit process. As you know, one purpose of the Order and of the federal government's increased emphasis on environmental justice is to ensure that minorities in our society live in healthy communities. As you have noted, minority communities have borne a disproportionate burden of modern industrial life. Far too often, this burden has fallen upon Native Americans. Due to the island location of its reservation, the Penobscot Indian Nation is subject to a disproportionate burden of the risks and the harms occasioned by industrial plants, such as Lincoln. I feel very strongly that our Native American communities should no longer bear this burden.

Ms. Carol Browner
Administrator
page 4

Thus, I urge EPA to give the concerns of the Nation special attention as your agency processes this permit, and to respond to those concerns in keeping with the federal trust responsibility to this tribe.

Thank you for your attention.

Sincerely,



Ada E. Deer
Assistant Secretary-Indian Affairs

cc: John P. DeVillars
Joseph Torras
The Honorable Jerry Pardilla

Exhibit 15

Response to Comments - NPDES ME0002003

Lincoln Pulp and Paper Company, Inc.

Lincoln, Maine

Background: From August 23, 1993 to October 21, 1993, the United States Environmental Protection Agency (EPA) and the Maine Department of Environmental Protection (DEP) solicited Public Comments on a draft NPDES permit, developed pursuant to a reapplication from Lincoln Pulp and Paper (ME0002003) for renewal of its permit to discharge wastewater to the Penobscot River. After a review of the comments received, EPA has made a final decision to reissue the permit authorizing the discharge. The following response to comments describes the changes that have been made to the permit from the draft and the reasons for these changes and briefly describes and responds to the comments on the draft permit. A copy of the final permit may be obtained by writing or calling the Municipal Assistance Unit of the Office of Ecosystem Protection, JFK Federal Building, Boston, MA 02203; Telephone : (617) 565-3610.

Comment Period: August 23, 1993 through October 21, 1993

Comments Received:	Natural Resources Council of Maine	October 17, 1993
	Environmental Defense Fund	October 18, 1993
	Penobscot Indian Nation	October 20, 1993
	Lincoln Pulp and Paper	October 20, 1993
	Trout Unlimited	October 21, 1993
	U.S. Department of Interior	October 20, 1993

Prepared by: EPA - New England
Boston, Massachusetts
January 22, 1997

Summary of Major Issues Raised

During the public comment period EPA received many detailed comments on the draft permit. A complete discussion of each comment and change from the draft to the final permit follows in the next section. This summary reviews the major issues reflected in the comments concerning dioxin discharges and describes the changes from the draft permit made in response to those comments.

A major theme in Lincoln Pulp and Paper's (LPP) comments is that the company did not want to be treated differently than other kraft pulp mills, potentially putting them at a competitive disadvantage.

The Penobscot Indian Nation's (PIN) comments seek as stringent dioxin limits as possible and continuing efforts to reduce dioxin to allow their members to consume fish from the River without fear, consistent with the Nation's fishing rights. Specifically, the Nation is not committed to any particular dioxin reduction method but believes chlorine dioxide substitution alone will not be sufficient and that some additional process change is required. The Nation stated that EPA has a trust obligation to protect tribal resources, including PIN statutorily protected fishing rights.

Environmental interest group comments cited the need for EPA to set water quality based limits for dioxin (TCDD) and furan (TCDF) which: 1) are protective of public health, aquatic life and wildlife from both adverse cancer and non-cancer impacts; 2) use a method detection limit that assures compliance; and 3) ensures the discharge complies with state narrative water quality standards.

The EPA also consulted with the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA) to assess the impact of the proposed dioxin discharges on bald eagles in the vicinity of the mill. FWS provided EPA with a biological opinion finding that the permitted dioxin discharges would not jeopardize the species, but would likely result in the "incidental take" of individuals of the species. Pursuant to the ESA, FWS authorized the take that would result from the proposed level of dioxin discharge, subject to certain conditions in the opinion.

EPA in the final permit is responding to these comments by setting in the permit the most stringent compliance method available to the Agency, given current approved analytical technology for dioxin, to assure that dioxin levels in the river meet applicable water quality requirements. This permit contains the most stringent terms for dioxin ever imposed in New England. The permit will require that dioxin remain at undetectable levels (defined as less than or equal to 10 parts per quadrillion (ppq)) measured at the bleach plant wastewater stream, prior to dilution by other plant flows or any removal by the mill's biological treatment plant. In addition, the permit contains a minimum total suspended solids (TSS) removal requirement of 80% for the treatment plant. Dioxin has an affinity for solids, therefore, the TSS removal level will help ensure efficient dioxin removal by the wastewater treatment plant. The permit will require LPP to maintain the level of TSS removal beyond what would be required to assure that TSS levels in the discharge meet EPA or Maine DEP technology requirements for TSS. EPA estimates that the

combination of these permit conditions will assure an in stream dioxin level at least six times lower than could be assured by the draft permit's requirement to monitor non-detect at the wastewater treatment plant discharge point to the river. In addition, in a separate letter LPP has committed to work with both the Governor's office and the Penobscot Nation on dioxin minimization and elimination as a long term cooperative effort.

EPA believes that the final permit and related initiatives by the Agency and DEP respond to many of the concerns of the commenters. EPA is obligated to ensure that any permitted discharge protect water quality, regardless of the potential competitive disadvantage to the permittee. But as a policy matter, EPA and DEP recognize that dioxin is a statewide issue and plan to require in the future that all Maine kraft pulp mills achieve undetectable levels of dioxin in the bleach plant wastewater. This strategy responds to the fish consumption advisories for dioxin in some Maine rivers, which persist even where mills now monitor non-detect at the discharge point to the river. Moreover, given the uncertainty inherent in the Agency's methodology for assessing risk from dioxin to health and the environment, it is reasonable to implement as aggressive a compliance method for dioxin as technically feasible to address any margin of error where possible. Non-detect at the bleach plant has also been proposed as the minimum level for dioxin control in the revised effluent guideline proposed by EPA for the Pulp and Paper Industry (Cluster Rule). EPA expects to promulgate the national Cluster Rule requirements soon. Therefore, LPP will not long be subject to a limitation different than its competitors.

In addition, this compliance method is stringent enough to ensure that Lincoln's discharge will meet any of the in stream water quality levels considered during the draft permit comment period. EPA estimates that enforcing non-detect at the bleach plant will result in an in stream level of 0.0049 ppq, which is below any of the instream dioxin levels EPA proposed to use as applicable water quality criteria for this permit. The final permit responds to the comments of the Penobscots and environmental interest groups by establishing the most stringent compliance method available using approved detection methods. The permit will also implement the extensive monitoring program required under the FWS's biological opinion, which should produce valuable information for the Penobscot River on impacts and trends in dioxin for future decision making. Finally, EPA has committed to work with DEP, the Governor's Office, LPP, Penobscots, and environmental interest groups on long term dioxin minimization and elimination. These measures are consistent with EPA's trust obligation to the Penobscot Nation.

Changes to the Final Permit

1. Outfall 001/TWS 100 Dioxin Limits

1993 Draft Permit	< 3 yrs	1 mg/day & 20 ppq daily max at WWTP
	3-5 yrs	109 ug/day & Report ppq daily max at WWTP
1996 Final Permit	During First Year	109 ug/day & 10 ppq daily max at WWTP
	After First Year	109 ug/day & 10 ppq daily max at WWTP
		10 ppq daily max at Bleach Plant

Basis: Improvements already made by the company have resulted in reduced formation of dioxin to < 10 ppq in the WWTP effluent, therefore, it is now possible to require compliance with 10 ppq at the WWTP immediately. By one year after permit issuance, as more fully described in the preceding section, EPA is setting the most stringent compliance method available to the Agency, given current approved analytical technology for dioxin, to assure that dioxin levels in the river meet water quality requirements. EPA estimates that these permit conditions assure an in stream dioxin level at least six times lower than could be assured by the draft permit's requirement to monitor non-detect at the wastewater treatment plant discharge point to the river. EPA is requiring internal waste stream dioxin monitoring because dioxin at the point of discharge is so diluted that it makes monitoring to assure compliance with water quality standards impracticable. 40 CFR § 122.45(h).

2. Outfall 001/TWS 100 -Furan Limits

1993 Draft Permit	< 3 yrs	200 ppq daily max at WWTP
	3-5 yrs	200 ppq daily max at WWTP
1996 Final Permit	During first year	100 ppq daily max at WWTP
	After first year	100 ppq daily max at Bleach Plant

Basis: The draft permit end of pipe limit on furan of 200 ppq was established by the Maine DEP as a BPJ technology requirement for all bleached kraft mills. The DEP has subsequently revised its BPJ determination to require 100 ppq at the WWTP upon issuance with the additional determination that a limit of 100 ppq be applied at the bleach plant effective at the time that the 10 ppq dioxin bleach plant limit goes into effect. DEP has included this furan limit in its certification for this permit.

3. Outfall 001 - BOD and TSS Current Tier

1993 Draft Permit	BOD 6,322/8,309 #/d Annual	TSS 14,180/17,735 #/d Annual
1996 Final Permit	BOD 4,231/8,500 #/d Summer	TSS 10,980/18,000 #/d Summer
	BOD 5,760/9,987 #/d Winter	TSS 12,920/20,450 Winter

Basis: The Maine DEP has since changed the method for establishing the technology limits for Lincoln. In a letter of September 9, 1996 to EPA, the ME DEP verified its intent to issue license limits for BOD and TSS consistent with the final permit limits for all three permit production tiers. DEP has certified these limits to EPA.

4. Outfall 001 - Percent TSS Removal Through the WWTP

1993 Draft Permit	No Requirement
1996 Final Permit	≥ 80 %

Basis: The permit will require that dioxin remain at undetectable levels (defined as less than 10 parts per quadrillion (ppq)) measured at the bleach plant, prior to dilution by other plant flows or any removal by the mill's biological treatment plant. In addition, Lincoln has agreed to include in the permit a minimum total suspended solids (TSS) removal requirement of 80% for the treatment plant. Dioxin has an affinity for solids, therefore, the TSS removal level will help ensure efficient dioxin removal by the wastewater treatment plant. The permit will require LPP to maintain the level of TSS removal beyond what would be required to assure that TSS levels in the discharge meet EPA or Maine DEP technology requirements for TSS in order to assure that the waste water treatment plant is achieving at least the 30% dioxin removal level EPA assumed in determining that this permit will protect water quality. The permit does provide that Lincoln may submit a demonstration that this limit is not achievable due to pollution prevention measures that make it impossible to achieve an 80% removal level because of low influent TSS levels.

5. Outfall 001 - Temperature/Thermal Load Limits

1993 Draft Permit	95 ° F / 100 ° F
1996 Final Permit	No Limit / 110 ° F
	Thermal Load Limit 5.1×10^9 BTU/day max daily

Basis: The ME DEP has subsequently determined that the BAT temperature limit for Lincoln should be 110 ° F and that a thermal load limit of 5.1×10^9 is applicable to the discharge under the provisions of the state's most recent temperature rules. EPA agrees that this represents BAT for temperature. In a letter of September 27, 1996 to EPA, the ME DEP verified its intent to issue license limits for Temperature and Thermal Load consistent with the final permit limits of 110 ° F and 5.1×10^9 BTU/day maximum daily. This limit is also consistent with Maine's temperature water quality standard.

6. Outfall 001 - WET Limits

1993 Draft Permit	LC50	≥ 50 % Effluent daily max	2/Year
1996 Final Permit	LC50	≥ 50 % Effluent daily max	1/Year
	C-NOEL	Report % Effluent daily max	1/Year

Basis: The ME DEP has determined under Chapter 530 that the WET limit should be to Report A-NOEL 1/year and C-NOEL 1/year. In a letter of September 27, 1996 to EPA, the ME DEP verified its intent to issue license monitoring requirements of 1/year for A-NOEL and C-NOEL for Outfall 001. EPA agrees that it is reasonable to eliminate the second acute WET test and replace it with a chronic test because of the much greater sensitivity of the chronic WET test. Therefore, EPA has added annual chronic monitoring and reduced the acute testing frequency to once per year. The acute LC50 limit of ≥ 50% Effluent was maintained.

7. Outfall 002 - BOD & TSS Limits

1993 Draft Permit	30 mg/l BOD & 40 mg/l TSS daily max
1996 Final Permit	40 mg/l BOD & 50 mg/l TSS daily max

Basis: The Maine DEP has subsequently (Best Professional Judgement) determined that the limits for this discharge should be 40 and 50 mg/l as established in the a December 9, 1995 Draft License transmitted to Lincoln Pulp and Paper Company.

8. BMP/Dioxin Minimization

1993 Draft Permit	Best Management Practices Program identifying specific short term projects to minimize dioxin formation and improved TSS removal.
1996 Final Permit	Dioxin Minimization Program to continue the company's initiatives toward minimizing dioxin, furan and AOX formation and reduction through wastewater treatment.

Basis: The 1993 short term, specific BMP requirements have been accomplished by the company. EPA has substituted a Dioxin Minimization Program requirement which eliminates the obsolete language while maintaining a general requirement that the company continue its efforts to reduce dioxin, furan, and AOX formation in the pulping and bleaching process and report on its activities to EPA and the DEP on an annual basis.

9. Biological Monitoring

1993 Draft Permit	Twice per year ambient fish dioxin monitoring following the Maine DEP Fish Dioxin Monitoring Program
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1996 Final Permit Five year ambient fish and eagle egg dioxin monitoring study developed by the US FWS integrated with the Maine DEP Fish Dioxin Monitoring Program

Basis: The fish and eagle egg dioxin monitoring program of the final permit is required to fulfill the monitoring requirement of August 25, 1996 US Fish and Wildlife Service Biological Opinion, pursuant to section 7(b)(4)(iv) and 9 of the Endangered Species Act.

10. Reopener

1993 Draft Permit Permit can be reopened based on fish tissue monitoring results.
1996 Final Permit Permit can be reopened for causes specified in federal regulations including new information. The permit can also be reopened to modify it to include any more stringent limitations designed to control dioxin which may become effective (i.e. the Cluster Rule) during the life of the permit.

Basis: The narrow reopener tied to continuing fish advisories has been replaced by a broader reopener which better tracks the regulations and provides for reopening based on new information including monitoring such as the fish tissue data (regardless of fish advisory status). 40 CFR § 122.62(a)(2). EPA has secured the permittees consent to allow EPA to reopen the permit if more stringent national technology guidelines designed to control dioxin (Cluster Rule) become effective.

11. Internal Waste Stream 100 - % Chlorine Dioxide Substitution

1993 Draft Permit N/A
1996 Final Permit Permittee to maintain daily records of percent Chlorine Dioxide Substitution.

Basis: Lincoln has agreed to maintain records of actual levels of chlorine dioxide substitution in its ongoing bleaching process and make them available to EPA and DEP upon request. Thus, a condition to monitor percent chlorine dioxide substitution has been added to the final permit in order to provide information on the status of the company's efforts to phase out use of elemental chlorine and as a measure of the progress toward reducing dioxin formation in the company's process. See 40 CFR § 122.44(i)(1)(iii).

12. Outfall 001 - Color

1993 Draft Permit 225 lbs/ton of unbleached kraft pulp production as a quarterly average limit beginning December 1, 1996
1996 Final Permit 293,300 lbs/day quarterly average effective July 1, 1998 with alternative of 225/ton of unbleached kraft pulp.

Basis: The state color law allows for alternative compliance with either a technology limit of 225 lbs of color per ton of unbleached kraft production, or a receiving water quality based limit of 20 color units. The final permit was changed to allow the permittee to meet either alternative and the water quality based limit being substituted on the limits page is consistent with other kraft mill permits and the state draft license. The effective date for the color limit was changed to reflect a subsequent change in the Maine color law.

13. Outfall 001 - AOX

1993 Draft Permit	Monitor monthly average mass AOX /mass pulp production discharged and average AOX concentration in the discharge.
1996 Final Permit	Monitor monthly average mass AOX/mass pulp production discharged.

Basis: An estimate of current pulp production can be deduced with knowledge of both the current mass AOX /production and AOX concentration in the discharge as was the reporting requirement in the 1993 draft permit. The company believes that such knowledge could place the company at a competitive disadvantage. EPA has therefore removed the requirement for reporting of effluent AOX in the final permit. The mass reporting units requirement has been changed from kg AOX / ton of pulp production to kg AOX / kkg of pulp production to be consistent with more recent standards for reporting and evaluating of AOX. EPA is using mass per unit of production to monitor AOX rather than the effluent concentration because this is consistent with the proposed Cluster Rule for pulp and paper facilities.

14. Outfall 001 - Total Lead

1993 Draft Permit	No Limit
1996 Final Permit	6.0 lbs/day monthly average & Report mg/l

Basis: EPA has determined, based on ME DEP's recent effluent sampling results, that a reasonable potential exists for total lead to exceed lead water quality criteria. EPA has thus added a water quality based lead limit of 6.0 lbs/day monthly average in the final permit.

15. Outfall 001 - Zinc, Copper & Pentachlorophenol

1993 Draft Permit	Monitor total zinc, total copper and pentachlorophenol
1996 Final Permit	No monitoring of total zinc, total copper and pentachlorophenol

Basis: Based on current information, EPA and the Maine DEP do not believe that reasonable potential exists for exceedence of the water quality standards for zinc and copper due to the Lincoln discharge. Pentachlorophenol is no longer used by the company and has not been

subsequently detected in its effluent. EPA has therefore deleted the proposed monitoring requirements for zinc, copper and pentachlorophenol in the final permit.

16. Changing Production Tiers

1993 Draft Permit	Permittee must receive written authorization from EPA in advance in order to qualify for higher BOD and TSS limits..
1996 Final Permit	Permittee notifies EPA and DEP when sustainable higher production has been achieved and qualifies for Tier I or II BOD and TSS limits as long as average production level requirements are met.

Basis: This provision deals with authorization of alternate BOD and TSS limits and does not regulate production rates. The revised language authorizes Lincoln to implement new BOD and TSS limits with a notice to EPA and DEP without awaiting EPA authorization. This mechanism is consistent with how production tiered limits are usually established. The reopener provisions are available if new monitoring data indicates that any actual production increase creates water quality problems.

17. Outfall 002 - WET Monitoring

1993 Draft Permit	Report LC-50	2/Year
1996 Final Permit	Report A-NOEL	1/Year
	Report C-NOEL	1/Year

Basis: The final permit monitoring requirement was changed to be more consistent with DEP license requirements (December 9, 1995 DEP draft license for Lincoln Outfall 002) that DEP included in its certification to EPA and to take advantage of more sensitive chronic toxicity testing.

18. Outfall 002 - Compliance Schedule

1993 Draft Permit	Submit plan to channel flow back to treatment plant.
1996 Final Permit	Flow left undisturbed.

Basis: The 1993 permit conditions were based upon Maine DEP concerns about the potential for contaminate releases from this flow. However, the DEP now believes that the area has stabilized and that construction of a structure to channel the flow would mobilize contaminants and result in a greater environmental impact than would the impact of leaving the area undisturbed. EPA agrees with this judgment. Thus EPA has deleted the prior draft permit requirement in the final permit and has maintained monitoring requirements for various pollutants to confirm that contaminants are not present as a first step in determining how best to protect the waters in this area.

Other Comments

Comment: The permit should include a reasonable compliance date for dioxin compliance.

Response: The permit requires immediate compliance with a BAT-based dioxin limit of 10 ppq at the wastewater treatment plant effluent and compliance with a water quality-based limit of 10 ppq at the bleach plant by one year of permit issuance, consistent with the requirement of CWA § 304(l)(1)(D) that controls on toxic pollutants achieve water quality standards as soon as possible, but not later than 3 years from the date of permit issuance. EPA has determined that these limits are feasible prior to the maximum 3 year period provided under section 304(l)(1)(D).

Comment: The appropriate criterion to be applied in the Lincoln permit is the DEP's 30 ppq technology-based limit.

Response: Thirty (30) ppq was an interim technology-based limit which reflected EPA's view of BAT at the time of previous draft permit preparation. All kraft mills in New England currently achieve levels of 10 ppq at their treatment plant discharge, therefore, EPA believes BAT for dioxin is at least 10 ppq after treatment. The final permit establishes an interim technology based limit of 10 ppq at the wastewater treatment plant effluent and a water quality based limit of 10 ppq at the bleach plant which must be met by one year of the permit effective date.

Comment: There is no basis for the imposition of dioxin limits pursuant to Section 304(l) of the Clean Water Act. All permit limitations and conditions relating to 2,3,7,8-TCDD, 2,3,7,8-TCDF and AOX should be deleted.

Response: Maine has posted advisories against consuming fish from this stretch of the Penobscot due to dioxin contamination. DEP then listed this stretch of the river under section 304(l), based on a finding that dioxin contamination caused the river to violate WQS. EPA approved that finding, and the river still violates WQS today. This permit represents the individual control strategy pursuant to section 304(l)(1)(D) designed to address the dioxin contamination in the this stretch of the river and to achieve WQS. EPA is limiting furan and requiring monitoring on AOX discharges based on the state's certification to EPA for this permit.

Comment: A national reassessment (of dioxin standards) is now ongoing and EPA could refrain from applying any dioxin limitations pending its outcome as application of the outdated dioxin criteria does not conform to Section 304(a)(1) of the Clean Water Act.

Response: EPA is continuing to process permits involving dioxin discharges in spite of the ongoing reassessment. Thus far, the reassessment has not resulted in any modification of the water quality criterion for dioxin. As a legal matter, there is no basis for EPA to decline to

impose water quality based limits on dioxin pending the reassessment. As a policy matter, EPA wants to issue this permit to start improving water quality in the river as soon as possible.

Comment: Anti-backsliding requirements should not prohibit an adjustment of permit limitations based on a dioxin reassessment or development of a site-specific criteria.

Response: If Maine subsequently adopts different dioxin criteria, then the permit would be subject to the provisions for modification under the New Regulations paragraph of 40 CFR §122.62 (a)(3). EPA has included reopener language that provides an opportunity to make a showing that any adjustment of the permit is consistent with anti-backsliding criteria.

Comment: EPA should not establish a criterion below the previously proposed 0.013 ppq value for dioxin in the October 1993 draft, the same value being applied routinely by EPA to all other kraft mills on Maine rivers as protective of all Maine residents, including high consuming anglers.

Response: The rationale for proposing the 0.0078 ppq criterion level is stated in the Fact Sheet. As stated in the dioxin summary above, EPA, recognizing the uncertainty in assessing the risk from dioxin, has adopted the most stringent compliance method available which is 10 ppq at the bleach plant effluent. Assuming that the mill's discharge is the only source of dioxin in this stretch of the river, a limit of 10 ppq at the bleach plant is projected to achieve 0.0049 ppq for dioxin instream, assuming that the WWTP operating at 80% TSS removal efficiency will remove at least 30% of the dioxin in the discharge. If one makes conservative assumptions about background levels of dioxin in the river, the permit assures instream levels of 0.0078 ppq. EPA has concluded that achieving 0.0049-0.0078 ppq instream protects all users of the river to a reasonable level of risk. In addition, the FWS biological opinion authorizing an incidental take of bald eagles by this dioxin discharge, assessed the impact of dioxin at a 0.0078 ppq instream concentration. A higher instream concentration would be beyond the scope of the opinion and require a reevaluation under the Endangered Species Act.

Comment: There is no basis for applying a limit on 2,3,7,8-TCDF. The Gold Book does not include a criterion for TCDF nor is the State of Maine currently limiting TCDF. All reference to TCDF should be deleted from the proposed permit.

Response: At the time on the draft permit, Maine required a 200 ppq end of pipe limit on TCDF as a State certification requirement. The state has since lowered that requirement to 100 ppq at end of pipe immediately and 100 ppq at the bleach plant beginning one year following the permit effective date. The final permit has been changed to reflect the furan limits which the state has included in its certification to EPA for this permit.

Comment: EPA Method 1613, or any other method for measurement of dioxin may be inadequate to measure the proposed permit levels. The lack of precision in this test method, or any other method, may result in false positives and permit violations.

Response: EPA Method 1613 has withstood thorough peer review and the method stands as the

agency's acceptable method for low level dioxin detection in water. EPA is using the 10 ppq minimum level as the enforcement threshold because it is the lowest reliable detection limit EPA has approved for enforcing dioxin limits in NPDES permits.

Comment: EPA should revise Part I.A.1 to drop the interim mass dioxin limit of 1.0 mg/day which was based on the 20 ppq technology limit.

Response: Both interim mass and concentration dioxin limits of the draft permit have been deleted. The draft permit limit of 109 ug/day at the WWTP is now in effect throughout the life of the permit consistent with the conditions of the August 25, 1996 biological opinion by the U.S. Fish and Wildlife Service (FWS).

Comment: Nothing will be associated with Lincoln's discharge that will impact water quality sufficiently to affect any species of bird, including bald eagles. All references to an instream concentration of 0.0096 ppq of dioxin to protect the eagle or wildlife should be deleted from the Fact Sheet.

Response: The Fact Sheet is a final document and is not subject to change. Refer to the final biological opinion dated August 26, 1996 by the FWS for a discussion of instream bald eagle based dioxin criteria. FWS has concluded that eagles are affected by dioxin levels well below 0.0096 ppq.

Comment: EPA has not proposed permit limitations sufficient to protect aquatic life or wildlife. Proposed limitations are based on dioxin levels deemed appropriate to protect human health and are not responsive to the differential needs of aquatic life and wildlife.

Response: Refer to the opening statement for a discussion of final permit requirements relating to this comment. Although the FWS biological opinion is focused on eagles, the opinion does impose monitoring requirements designed to monitor wildlife impacts generally. In addition, this permit will protect instream water quality to 0.0049 - 0.0078 ppq of dioxin.

Comment: EPA has no authority to impose BOD or TSS limits based on the Maine's past demonstrated performance (PDP) technology determination.

Response: EPA permit limits must satisfy state certification requirements. At the time of the draft permit, the Maine DEP had notified EPA of its intent to certify its BPT determined limits as a State Certification requirement. Thus, the draft permit contained those limits. Since the time of the draft permit, the DEP has updated its BPT determination (including seasonal limits) and the final permit TSS and BOD limits reflect that determination for Lincoln that the state has certified to EPA.

Comment: Temperature limits are not justified under Federal or Maine Law and factually unwarranted. The proposed EPA limits fail to provide a reasonable opportunity for dilution, diffusion and mixture, as required by state law.

Response: EPA permits must reflect, as a minimum, limits required by a state as part of its state certification. The temperature limit of 100 ° F has been replaced by a 110 ° F limit based upon the state's certification, which reflects ME DEP's latest Best Professional Judgement technology determination for Outfall 001. The final permit also now includes a thermal load limit of 5.1×10^9 BTU/day as calculated by the Maine DEP in accord with Maine's river temperature effect limit of 0.5° F. Lincoln may choose to comply with either of these limits.

Comment: EPA is not consistently applying WET limitations from Region to Region.

Response: There are no specific national WET permit requirements and WET requirements do vary from state to state based on state water quality standards. Maine's Chapter 530 Rules apply to Maine dischargers and EPA Region I includes those requirements in NPDES permits pursuant to § 301(b)(1)(C) of the CWA and when the state certifies the WET tests to EPA for inclusion in the permit.

Comment: The permit should provide that if the first year of monitoring does not indicate toxicity after proper allowance for mixing, then testing frequency should be automatically eliminated or reduced to once per year.

Response: The WET requirements of the final permit are based upon current ME DEP WET determinations under Chapter 530 as certified to EPA for this permit. Both Outfall 001 and 002 would be tested once per year for both acute and chronic WET.

Comment: The Fact Sheet states that the test is intended to protect aquatic organisms prior to mixing during low stream flow conditions, immediately downstream of the discharge where mixing has not occurred. Yet the 50% limit does not accurately project the full dilution of Lincoln's effluent at the point of discharge via a multi-port diffuser.

Response: Region I and ME DEP evaluations do take dilution into account while setting WET limits. Lincoln is getting the LC 50 limit because EPA and DEP agree there is dilution available to this discharge. If the dilution available to this discharge were less than 100:1, then the LC50 limit would have been 100% rather than 50%.

Comment: The Brook Trout testing requirement is not based on an established protocol and is technically flawed.

Response: This requirement has been removed from the final permit. The final permit requires chronic and acute WET testing once per year for Outfalls 001 and 002 to include the invertebrate, daphnid and the vertebrate, fathead minnow.

Comment: A No Observable Acute Effect Level (A-NOEL) limit derived from actual effluent dilution is a more appropriate WET limit than the specified LC-50.

Response: The LC-50 has a greater statistical certainty and the Region I WET policy has been to

specify acute limits using the LC-50. Maine's subsequent adoption of the Chapter 530 Rules selects A-NOEL as the reporting and limit units of choice. However, both results are obtained from the same test and EPA has maintained the LC-50 limit for Outfall 001 as was publicly noticed because it will be relatively easy to derive the acute WET test results from the test required to be run to get the chronic WET test results.

Comment: EPA and DEP should coordinate their WET testing requirements to eliminate inconsistencies which could result in greater expense in running the tests.

Response: EPA and DEP attempt to be consistent in permitting requirements, including those for WET testing. The final permit contains WET requirements which are consistent with a new license which the ME DEP is preparing for Lincoln and the certification DEP has supplied for this permit.

Comment: The abandoned portion of the Mattanawcook stream bed is not classified as a tributary to the Penobscot River as stated in the fact sheet.

Response: The Maine DEP does not consider this stream bed to be a tributary to the Penobscot River since the majority of the flow in the stream was rerouted in 1987. EPA, however, still considers the remaining stream bed, the adjacent wetlands, and the flow through it to constitute a water of the U.S. The permit includes monitoring for a variety of contaminants, including dioxin and furan, and WET testing to assure that water quality is protected.

Comment: The wetland area which has resulted from the relocation of an original Mattanawcook stream channel may not effectively attenuate pollutants, including dioxin, which may originate from the bark pile landfill on the site. Sludge from this landfill contained 12 ppt of dioxin in 1989. The wetland itself should be protected from dioxin contamination.

Response: As a first step in determining how to protect these waters of the U.S., EPA has required monitoring, including for dioxin, at Outfall 002 to assure that the flow from this area does not become a source of contaminants. Since 1991, LP&P has been reclaiming material from the bark pile area as a fuel source at the rate of about 16,000 tons per year. The limited dioxin sampling to date has not detected dioxin.

Comment: No basis has been provided for imposing annual dioxin monitoring requirements for Outfall 002 since an analysis of the flow was found to be non-detect and there is no apparent reason that any change will occur in future results. Also, the permittee has been eliminating the waste piles and cleaning up this area.

Response: EPA believes that the limited sampling conducted thus far is not sufficient to justify elimination of monitoring for dioxin. The annual sampling is a reasonable precaution until the area is cleaned up.

Comment: The permit conditions requiring that a Best Management Practices (BMP) program be

developed and implemented are illegal and unwarranted. EPA has no authority to require Lincoln to change its production processes or otherwise prescribe how a permittee should meet effluent requirements.

Response: As mentioned in the changes to the final permit section, the BMP language has been updated to reflect current requirements. EPA does have authority to impose BMP's, however, when reasonably necessary to carry out the purposes and intent of the Act. 40 CFR § 122.44(k)(3). The updated BMP requirements simply require Lincoln to pursue its dioxin minimization program and to report on that program every 12 months to EPA and DEP. Minimizing dioxin formation and discharges are clearly consistent with the purposes of the Act.

Comment: The only way to reduce levels of dioxin and other related chlorinated organic compounds in fish tissue to safe levels is to eliminate chlorine from the kraft bleaching process, or, in the alternative, to prohibit the discharge of dioxin entirely.

Response: EPA does not believe that a totally chlorine free process is the only way to minimize and eventually eliminate dioxin in kraft mill discharges. Other technologies, including those involving zero bleach plant discharge which recycle bleach plant process water, may achieve the same or better results. LP&P has instituted chlorine dioxide bleaching as a substitute for chlorine for up to 30% of LP&P's chlorine use and plans on going up to at least 40% with the current generating capacity it has on-site. The company has committed to work with the PIN, the DEP, environmental interest groups and EPA to minimize the impact of the mill on the environment, including dioxin reduction, over the long term. As explained in response to other comments, the permit protects public health and tribal resources, including the Penobscot Nation's fishing rights, to a reasonable level of risk and protects wildlife consistent with EPA's best assessment of safe dioxin levels for wildlife and FWS's findings in its biological opinion.

Comment: Concerns were raised about the biological monitoring program concerning cost effectiveness, data availability, and data use.

Response: The biological monitoring program has been extensively reviewed and expanded as a result of the August 25, 1996 FWS biological opinion. EPA, FWS and Lincoln will involve PIN and other interested stakeholders in both the execution and interpretation of the results of this effort.

Comment: The reopener might unfairly hold the company accountable for impacts outside of company control, such as airborne deposits of dioxin in the river.

Response: The narrow reopener of the draft permit has been replaced by a broader reopener which simply tracks the regulations and provides for reopening based on new information including monitoring such as the fish tissue data (regardless of fish advisory status). Lincoln will have ample opportunity to examine the basis of any proposed reopening of the permit in the procedure provided under 40 CFR §§ 122.62 and 124.5.

Comment: EPA is apparently prepared to use the Maine Department of Human Services, Bureau of Health fish consumption advisories as the benchmark for whether water quality standards for TCDD are being violated. The consumption advisory should be lifted, and even if it is not, the advisory is not sufficient basis for determining that this stretch of the river violates water quality standards.

Response: Elimination of the need for fish consumption advisories is an important goal but it is not the only benchmark for determining compliance with water quality standards. Others include protecting wildlife, including the bald eagles in the area.

Comment: The goal of the fish monitoring program -- to ensure that increased production does not result in increased TCDD fish contamination -- will not only fail to reduce the existing significant public health and wildlife threats from TCDD contamination, but will serve to perpetuate them.

Response: EPA agrees that the proposed permit's focus on increased dioxin levels in fish was too narrow. The current reopener language is sufficiently broad to account for any relevant data on dioxin impacts that result from the environmental monitoring program. The focus of that monitoring is to measure progress in reducing dioxin levels in fish from all mill activities, not just production changes. EPA shares the goal of reducing and eliminating the discharge of dioxin and associated compounds to the Penobscot River. The permit requires that dioxin remain at undetectable levels (defined as less than or equal to 10 parts per quadrillion (ppq)) measured at the bleach plant wastewater stream, prior to dilution by other plant flows or any removal by the mill's biological treatment plant. In addition, the permit contains a minimum total suspended solids (TSS) removal requirement of 80% for the treatment plant. Dioxin has an affinity for solids, therefore, the TSS removal level will help ensure efficient dioxin removal by the wastewater treatment plant. The permit will require LPP to maintain the level of TSS removal beyond what would be required to assure that TSS levels in the discharge meet EPA or Maine DEP technology requirements for TSS. (The permit does provide for Lincoln to submit a demonstration if pollution prevention efforts on the part of the mill make this level of TSS removal not achievable.) EPA estimates that the combination of these permit conditions will assure an in stream dioxin level at least six times lower than could be assured by the draft permit's requirement to monitor non-detect at the wastewater treatment plant discharge point to the river.

Comment: In March of 1993, the Maine Board of Environmental Protection (BEP) adopted revisions to Chapter 584 of the State's Water Quality Control Rules. These requirements will serve to provide more complete information on effluent quality than the testing conditions contained in the proposed permit and should be required by EPA as a condition of the Lincoln permit.

Response: Chapter 584 has since been replaced by Chapter 530.5 which provides for both WET and priority pollutant license requirements. WET requirements were included in the 1993 draft EPA permit, and, as a logical outgrowth of the WET requirements in the proposed permit, EPA has changed the final permit WET requirements to be consistent with Chapter 530.5 and DEP's

certification to EPA for this permit. Priority pollutant monitoring, which is now part of Chapter 530.5, was not originally included in Lincoln draft permit, and thus EPA is not including those requirements in the final permit.

Comment: The permit should not tie approval of changes in production levels to fish tissue monitoring results as noted in the Reopener Clause.

Response: EPA regulates effluent levels not production rates. EPA may deny production based effluent limitation increases if they violate water quality standards, but EPA cannot directly regulate production. If future environmental monitoring indicates a need for more stringent dioxin limits, the permit may be reopened. The Reopener Clause has been changed accordingly.

Comment: Absorbable organic halogens (AOX) monitoring should be a 24 hour composite sample and should be reported in either a mass/production units or in concentration units, but not both. Also, the SCAN-W 9:89 protocol for AOX analysis may not be equivalent to the SM Method 506.

Response: The AOX monitoring requirement of the final permit has been changed from monitoring both mass/production and concentration to monitor only for kg AOX per k-kg unbleached pulp production consistent with EPA's proposed cluster rule. This change eliminates direct calculation of the company's current monthly pulp production, which might have revealed trade secret information to Lincoln's competitors. Since public notice of the 1993 draft permit, the analytical method for measuring AOX has been standardized by publication of EPA Method 1650 and the final permit specifies use of that procedure.

Comment: The Outfall 001 monitoring requirements for pentachlorophenol, copper and zinc should be deleted.

Response: Pentachlorophenol was subsequently monitored on three separate occasions and all results were non-detect. Copper and zinc are no longer expected to cause or contribute to a water quality standard violation based on monitoring results and available dilution. Thus, EPA has eliminated monitoring for pentachlorophenol, copper and zinc in the final permit.

Comment: EPA should not use a dioxin criterion until a specific criterion is adopted by Maine. EPA has no authority to set a site-specific instream criterion for this permit.

Response: In 1990, Maine amended its water quality statute to require that EPA's national criterion for dioxin would apply in Maine if the Maine Board of Environmental Protection failed to adopt its own criterion by June 1991. The Board did not adopt an alternative dioxin criterion, nor did it select a cancer risk level for applying EPA's criterion. In 1993, Maine amended its water quality statute to prohibit the Board from adopting any numeric water quality criterion for, or setting a cancer risk level from exposure to, dioxin prior to January 1994. The Board has not yet adopted its own alternative dioxin criterion nor has it selected a risk level for implementing EPA's dioxin criterion.

EPA interprets the current Maine water quality statute to mean that a state dioxin criterion based on EPA's national criterion remains in effect, but there is no risk level established by the State for dioxin. In the absence of an explicit risk level designation, but in consideration of other provisions of the Maine standards, EPA generally implements the state dioxin criterion using a 10^{-6} (10^{-6}) level of risk (one in a million risk of an additional cancer). When this risk level is factored in with the other elements of EPA's dioxin criterion that are in effect in Maine, this yields an in-stream dioxin level of 0.013 ppq. In the case of the Lincoln Pulp and Paper draft permit, EPA proposed to establish an effluent limit for dioxin based on an ambient concentration of dioxin of 0.0078 ppq. This concentration reflects a risk level that takes into account that the 50th percentile level of fish consumption in the tribe is greater than the 50th percentile level of fish consumption in the general population. As described in the Summary of Major Issues Raised above, in the final permit, EPA, recognizing the inherent uncertainty in risk, used the most stringent compliance method available (non-detect at the bleach plant) which is calculated to result in an in stream level of 0.0049 ppq, which is well below the criterion. In order to act on this permit, EPA applied the Maine criterion to the circumstances surrounding this permit to protect public health and the environment.

Comment: The risk to highly exposed individuals (high fish consumers) was raised as a concern as well as the bioconcentration factor used by EPA to derive the dioxin criterion. One comment suggested EPA should address non-cancer effects of dioxin.

Response: Given the uncertainties of risk assessment calculations, EPA is setting the most stringent technologically feasible method available for limiting dioxin discharges. The final permit requires that dioxin remain at undetectable levels (defined as less than or equal to 10 parts per quadrillion (ppq)) measured at the bleach plant wastewater stream, prior to dilution by other plant flows or any removal by the mill's biological treatment plant. The final permit also includes a minimum TSS removal requirement of 80% for the treatment plant, due to dioxin's affinity for solids, to further ensure dioxin removal through the plant. EPA's best judgment is that these measures will assure an instream level of dioxin of 0.0049 ppq if the mill's discharge is considered alone and .0078 ppq if EPA factors in reasonable background levels of dioxin. Estimates of risk exposure are subject to substantial scientific uncertainty, but EPA's best estimate is that this instream level exposes people who consume as much as 110 grams of fish per day to a cancer risk of one in one hundred thousand (10^{-5}). This is a reasonable level of risk. While there are uncertainties in each of the values EPA uses to estimate these cancer risks, including bioconcentration factors, the Agency is relying on the values EPA and DEP used to develop their dioxin criteria. As to non-cancer risks of dioxin, EPA does not now have accepted tools for assessing those risks in the context of developing an NPDES permit.

Comment: EPA's use of the Penobscot Nation's fish consumption survey to assess the Nation's exposure is flawed. One comment suggested the survey was statistically and scientifically unsound. Other comments pointed out that it only documents current consumption levels, which are presumably suppressed due to the fish consumption advisory on the river. One comment asserted that EPA is obligated to protect the Penobscot Nation's unrestricted consumption of fish from the river, not the current, suppressed consumption levels.

Response: EPA recognizes that there are limitations on the utility of the Penobscots' fish consumption survey. To compensate for those limitations, EPA looked at possible surrogate values for assessing the risk exposure of tribal subsistence fishing populations. Recent reviews of subsistence populations show fish consumption levels ranging from 32 - 140 grams per day. See Water Quality Guidance for the Great Lakes System: Supplementary Information Document (SID), March 1995, at 487-488. As described in the Fact Sheet supporting the 1993 proposed permit, an instream water quality level of 0.0078 ppq dioxin creates the following levels of risk, depending on the level of fish consumption: 1×10^{-6} at 11 g/day; 1.26×10^{-5} at 144 g/day; and 2.92×10^{-5} at 336 g/day. This permit protects consumption levels as high as 336 grams of fish per day to a reasonable level of risk. While these risk calculations are subject to substantial uncertainty, EPA is using the best tool it has available to gauge how best to protect the Nation. EPA believes this approach to analyzing the Penobscot Nation's fish consumption is consistent with section 4-401 of the Executive Order on Environmental Justice (E.O. 12898 (Feb. 11, 1994)) and its provision that agencies analyze information on the consumption patterns of populations who principally rely on fish for subsistence.

Moreover, there are several assumptions EPA has made in this assessment that are fundamentally conservative. EPA believes the 30% removal dioxin level for the mills wastewater treatment plant is conservative, in light of the 80% TSS removal level that Lincoln has agreed to maintain (absent any unusual pollution prevention measures on their part). EPA has made conservative estimates of background levels of dioxin in the Penobscot River in deriving the 0.0078 ppq instream concentration for dioxin. Absent those background levels, the permit achieves an instream concentration of 0.0049 ppq. EPA has assumed that all effluent from the bleach plant will be maximally contaminated to just under 10 ppq. It is likely that Lincoln will maintain levels of dioxin well below this concentration to achieve consistent compliance with the permit. EPA's cancer risk assessment also assumes that all the fish a person eats will be uniformly maximally contaminated with dioxin on the assumption that the fish have resided in the river long enough that dioxin no longer migrates into the fish. In fact, the dioxin contents of fish in the river vary substantially and EPA has no evidence that the fish consumed by the Nation are all maximally contaminated.

Comment: EPA has a trust obligation to the Penobscot Nation to protect its fishing rights against degradation by dioxin discharges. Another comment suggested EPA should follow Maine's policy for protecting highly exposed sub populations to a one-in-a-million level of risk.

Response: EPA agrees that this permit must protect the Penobscot Nation's fishing rights. As described in response to the prior two comments, EPA has carefully reviewed the situation of the Penobscot Nation and, after extensive consultations with representatives of the Nation, has determined that dioxin discharges permitted here expose even high-level fish consumers to only very low levels of risk. The Agency is not required to protect all highly exposed individuals to a one-in-a-million level of risk. Rather, EPA has consistently followed a national policy to protect against risks from surface water contamination based on somewhat higher, while still reasonable level of risk. EPA has met its trust obligation to the Penobscot Nation by limiting the Nation's dioxin exposure to a level of risk within the range of risks that EPA has determined to be

reasonable in cases of other highly exposed tribal and non-tribal populations. In so doing, EPA has taken particular account of the fishing rights and consumption patterns of the Penobscot Nation and has consulted fully with it regarding the Agency's approach to its permit decision.

Comment: The permit dioxin detection level should be lowered from 10 ppq to 1 ppq.

Response: Although analytical values lower than 10 ppq may be observed using newer generation high resolution gas chromatography/high resolution mass spectrometry, the agency continues to recommend that permit limits be enforced only when the Method 1613 minimum level of 10 ppq is exceeded for an individual result (April 1, 1996 EPA Memorandum "Method 1613 Method Detection Limit Study Report," William Telliard, Engineering and Analysis Division, EPA, Washington). Therefore, for purposes of enforcement, reported values of non-detect and reported values of detect at or below 10 ppq will be deemed in compliance with this permit. Moreover, Attachment A of the permit includes a substantial program for instream monitoring of dioxin levels, pursuant to the requirements of the Fish and Wildlife Services biological opinion. EPA may consider any new information from this monitoring program pursuant to 40 CFR § 122.62(a)(2) for the purposes of deciding whether to modify the permit.

Comment: EPA should perform a TMDL for all of the sources of dioxin for the Penobscot River.

Response: TMDLs are usually conducted by the State rather than EPA. EPA did perform a preliminary TMDL-type of dioxin analysis for the Penobscot River and found no impact on LP&P's limits because of minimal contribution from other sources upstream and increased river flows before the next significant source downstream, James River Paper. The ME DEP is planning to do a TMDL within the next two years, and if this raises new information, EPA will determine whether it is appropriate to reopen the permit.

Comment: The narrative prohibition on the discharge of foam may not be enforceable.

Response: Since foam is not quantifiable, enforcement of the prohibition is admittedly difficult. With quantifiable pollutants such as BOD and TSS, EPA ordinarily would evaluate violations in light of the percentage that a limit had been exceeded in determining penalties. Such a quantitative evaluation would not be possible in the case of foam. On the other hand, the standard in the permit is sufficient to support an enforcement action if a party can document that LPP is discharging foam at any time. The language in section A.4.(a) of the permit is the most reasonably enforceable formulation EPA has been able to devise for controlling foam discharges.

Comment: The non-process Outfall 002 should have the same pH range requirement as the process Outfall 001.

Response: The Maine DEP has stipulated the more restrictive pH range of 6.0 to 8.5 for the non-process Outfall 002 in the state certification for this permit. The process Outfall 001 pH range of 5.0 to 9.0 is the minimum required by federal effluent guidelines and Maine does not require a more stringent range for that process water.

Comment: The thermal flow is incorrectly illustrated in the Fact Sheet. The diagram should depict the NCCW as flowing into the paper mill primary clarifier.

Response: This change is noted herein for the record. The Fact Sheet is a completed document and cannot be changed.

Comment: On Page 2 of the Fact Sheet, the first paragraph of "Permit basis" should be amended to say, "The pulp and paper process wastewater treatment plant is also used to treat spills of process chemicals and wastewaters."

Response: Although the fact sheet cannot be changed, this error in the fact sheet is noted herein for the record. The permittee must report spills in accordance with the procedures in Part LB of the permit.

Comment: Part IV of the Fact Sheet, Permit Basis, Page 2, paragraph 2 should be changed to state that sludge is incinerated, not land filled.

Response: Although the fact sheet cannot be changed after the public notice, this correction is noted here for the record. This sludge is used by LP&P as fuel for its multi-fuel biomass boiler.

Comment: Construction of the Precipitated Calcium Carbonate Production (PCC) plant has not started, but may be constructed some time in the future. Page 5 should be revised accordingly.

Response: This comment is duly noted herein for the record but does not effect any permit changes.

Comment: Lincoln plans to route non-contact cooling water (NCCW) to the primary clarifier, rather than to the pulp mill effluent (following the secondary clarifier) as indicated in the draft permit.

Response: This change is duly noted herein for the record.

Comment: The sampling location language on Page 7 of the Fact Sheet should be changed to say, "All effluent parameters, except for NCCW flow, will be sampled for the process wastewater flow after mixing with the thermal water and before discharge."

Response: This change has been noted for the record. New language has been added to Page 4 of the final permit to clarify sample collection for Outfall 001.

Comment: Lincoln's sanitary wastewater flow discharged to the Lincoln Sanitary District is 44,000 gpd, not 19,500 as stated on Page 2 of the Fact Sheet.

Response: The Fact Sheet is in error. This change is noted herein for the record.

Comment: The 7Q10 flow of 2580 cfs and the Harmonic Mean flow of 5693 cfs noted in the Fact Sheet Attachments G and H have been revised by the Maine DEP to 2690 cfs and 6210 cfs.

Response: These changes are noted herein for the record.

Comment: The thermal flow volume given in Attachment H should be 2.3 mgd, not 2.5 mgd.

Response: That correction is noted herein for the record. Both the draft and the final permit specify the correct current thermal flow of 2.3 mgd.

Comment: Footnote 1 on Attachment H is incorrect. Lincoln's intake water is from a totally unconnected source, a series of dam-controlled lakes. All calculations of effluent dilution should be revised accordingly.

Response: This change is noted herein for the record. The following are the corrected current flows and dilution ratios:

Current Outfall 001 Permit Limit Maximum Daily Flow = 13.5 mgd + 2.3 mgd = 15.8 mgd

7Q10 Estimated River Flow at Lincoln = 2690 cfs = 1667 mgd

Harmonic Mean Estimated River Flow at Lincoln = 2610 cfs = 4012 mgd

Dilution at Outfall 001 Maximum Daily Flow for 7Q10 River Flow:

$$\frac{1667\text{mgd} + 15.8\text{mgd}}{15.8\text{mgd}} = 106$$

Dilution at Outfall 001 Maximum Daily Flow for Harmonic Mean River Flow:

$$\frac{4012\text{mgd} + 15.8\text{mgd}}{15.8\text{mgd}} = 255$$

SUPPLEMENTARY RESPONSE TO COMMENTS: These comments were received following the formal comment period on the proposed permit. Although EPA is not necessarily obligated to respond to these comments, the Agency has done so in an effort to have a complete record of interested parties' concerns.

Comment: A comment requested that EPA wait to issue this permit until EPA's Cluster Rule has established technology based requirements for dioxin.

Response: EPA has secured the permittee's consent to allow EPA to modify the permit in the manner set forth in the revised reopener provision to address any additional or more stringent requirements designed to control dioxin.

Comment: EPA should require Lincoln to eliminate their discharge of dioxin or deny the permit

because: 1) the criterion level 0.0078 ppq suggested by EPA translates to a 0.04 ppt level in fish which is not being achieved, and continued discharge will not comply with the narrative fishing standards 2) even fish tissue levels of 0.04 ppt of dioxin will not protect eagles; and 3) ambient levels of dioxin in fish already exceed human health and wildlife criteria, therefore, any additional discharge of dioxin is unacceptable.

Response: Item 1: This comment uses current conditions where the instream criterion is not being met to project that in the future violations will still occur. If the assumptions used in development of the dioxin criteria are correct, the current water quality violations should be eliminated when the proposed limits designed to achieve an instream level below 0.0078 ppq are achieved. In addition, water quality criteria are usually expressed as instream chemical levels designed to protect the uses of the receiving stream. If the comment is suggesting that an alternate fish tissue level criterion should be included in the standards, this must be done through the state's standards setting process and not through an individual permit issuance. In any event, if water quality standards are not achieved by the proposed limits, the permit may be reopened based on this new information.

Item 2: Although Fish and Wildlife Service has estimated that lower instream levels of dioxin would be desirable, the Service issued a Biological Opinion which authorized the permitted levels, provided the permittee implemented reasonable and prudent measures to mitigate the impact on the eagles. This permit implements FWS's reasonable and prudent measures.

Item 3: Upstream of Lincoln Pulp and Paper background levels of dioxin in fish tissue are non-detect. In order to estimate a background level for the purposes of doing a TMDL type calculation EPA assumed fish tissue levels of one half of the detection limit (0.05 ppt) to calculate an instream background level of 0.0028 ppq which was used in calculations that showed that 0.0078 ppq will still be met instream even assuming background levels of 0.0028 ppq. EPA is not aware of evidence that background water quality criteria are exceeded instream above Lincoln Pulp and Paper.

Comment: The Penobscot Nation believes that the LP&P permit is the key to restoring their fishing rights. EPA needs to answer the question, will this permit reduce dioxin so the Tribe can exercise its fishing rights without adverse effects?

Response: It is EPA's best judgment based on its currently available risk assessment methodology that this permit will protect the Nation's ability to consume fish to a reasonable level of risk.

Comment: A TMDL should be prepared which takes into account all sources of dioxin.

Response: EPA performed a TMDL type analysis which considered background as well as the other kraft paper mill on the river. It shows that dioxin limits of non-detect (10 ppq) at the bleach plant for both Lincoln Pulp and Paper and James River Old Town will meet both of the dioxin criteria 0.013 ppq and 0.0078 ppq considered in development of this permit. Therefore, the terms

of this permit are consistent with the likely results of a TMDL for dioxin on this river.

Comment: Considering background levels 0.0049 ppq will not be met. What is the instream dioxin level considering background and other sources?

Response: The estimate of 0.0049 ppq instream is based on Lincoln's discharge alone, to be consistent with the earlier estimates used in the permit fact sheet. As discussed above, a conservative estimate of the instream concentration including background is 0.0078 ppq. As explained above, an instream dioxin concentration of 0.0078 ppq is reasonably protective of the Penobscot Nation's fishing rights.

Comment: Why does the permit allow until one year for the permittee to meet 10 ppq at the bleach plant?

Response: This is the shortest time within which the company can make the changes in its manufacturing process to comply with this new limit. Section 304(l) of the Clean Water Act allows up to three years for compliance with limits designed to implement water quality standards for dioxin.

Comment: Why is Lincoln not required to meet 0.0049 ppq instream?

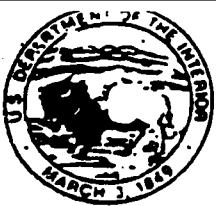
Response: The level of 0.0049 ppq is not a water quality criterion, but just an estimate of the instream concentration as a result of this discharge at 10 ppq at the bleach plant, not including any background level contribution as discussed above.

Exhibit 16

EXHIBIT 16 (See separate binder)

**PENOBSCOT INDIAN NATION'S APPEAL OF
THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMIT FOR DISCHARGES FROM THE
LINCOLN PULP AND PAPER COMPANY IN LINCOLN, MAINE**

Exhibit 17



United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

SEP 2 - 1997

John P. DeVillars
Regional Administrator
Environmental Protection Agency
Region 1
J.F.K. Federal Building
Boston, MA 02203-0001

Re: Penobscot Indian Nation Request for Evidentiary Hearing
Lincoln Pulp & Paper NPDES permit No. ME0002003

Dear Mr. DeVillars:

The Department of the Interior (Department) has reviewed the correspondence filed with you by the Penobscot Indian Nation (PIN), Lincoln Pulp and Paper Company (Lincoln), and the State of Maine, Department of the Attorney General (State), in the above-referenced Request for Evidentiary Hearing concerning NPDES Permit No. ME0002003. Certain of the positions set forth in those filings cause concern to this Department, in its role as primary agency within the Federal Government charged to act on behalf of Indian Tribes. Consequently, my intent in this letter is to ensure that your agency is fully aware of the positions of this Department, and of the United States, concerning certain issues relevant to the Maine Indian Claims Settlement Act, the Federal Trust responsibility to Maine Indians, and the fishing rights of the Penobscot Indian Nation.¹

I address three major points, as follows:

1. The Nature of the Federal Government's trust responsibility to the PIN;
2. Interpretation of PIN's fishing rights;
3. PIN's right to appeal the NPDES permit

¹ The First Circuit has recognized the Secretary of the Interior as the administrator of the Maine Indian Claims Settlement Act (MICSA). Passamaquoddy Tribe v. State of Maine, 75 F.3d 784, 794 (1st Circuit, 1996). Moreover, the Department of the Interior is recognized to have reasonable power to discharge effectively its broad responsibilities in the area of Indian affairs, and its actions in interpreting tribal rights are accorded substantial deference. Parravano v. Babbitt, 70 F.3d 539, 544 (9th Cir. 1995), cert. denied, 116 S. Ct. 2546 (1996).

1. The Nature of the Federal Government's trust responsibility to the PIN

As you know, the United States has a trust responsibility to protect the lands and resources of federally recognized Indian Tribes. In the exercise of this trust responsibility, the United States is held to the most exacting fiduciary standards. Seminole Nation v. United States, 316 U.S. 286 (1942). This fiduciary responsibility extends to all agencies of the Federal Government, including the Environmental Protection Agency (EPA). Nance v. EPA, 645 F.2d 701, 711 (9th Cir. 1981).

The Department acknowledges that the Maine Tribes came late to federal recognition and protection. However, as of 1975, when the First Circuit recognized that the protections of the federal Trade and Intercourse Act (1 Stat. 137 (1790), now codified at 25 U.S.C. § 177) did apply to the Maine Tribes (See Joint Tribal Council of Passamaquoddy Tribe v. Morton, 528 F.2d 370, 379-380 (1st Circuit, 1975)), the United States has recognized and acted in furtherance of its trust responsibility to protect the lands and natural resources of the Maine Indians, beginning with the United States advocacy on the Tribes' behalf in the Maineland claims litigation. This litigation, which alleged that Massachusetts and Maine illegally took lands of the Maine Indians without federal involvement or consent in violation of the Trade and Intercourse Act, was settled through the enactment by Congress in 1980 of the Maine Indian Claims Settlement Act (MICSA), 25 U.S.C. § 1721, et seq., which ratified Maine's Act to Implement the Maine Indian Claims Settlement, 30 M.R.S.A. § 6201, et seq. (Implementing Act).

Contrary to the assertions made in several of the filings before you, the United States did not through MICSA limit its trust responsibility. While the MICSA did create a unique relationship between the State of Maine and the Maine Tribes, the federal trust obligation to protect the lands and natural resources of the Maine Tribes continues. The Penobscot Nation is a federally recognized Indian Tribe (61 Fed. Reg. 58211, 58213 (1996)) and, as such, is entitled to those rights and benefits which the United States provides to Indians based upon their status as Indians. See 25 U.S.C. § 479a-1(a); H. Rep. No. 96-1353, p. 18, reprinted in 1980 U.S.C.C.A.N. 3786, p. 3794. The Penobscot Reservation is a federal reservation under the jurisdiction of the United States. 25 U.S.C. §§ 2 and 9.

The Department thus finds erroneous the views expressed which suggest that EPA has no special relationship with the Penobscot Indian Nation. In MICSA, Congress formally confirmed the federal recognition of the Penobscot Nation, the Passamaquoddy Tribe and the Houlton Band of Maliseet Indians. 25 U.S.C. §§ 1722, 1721, 1725(i). (Subsequent Congressional action extended this federal recognition to the Aroostook Band of Micmacs. Pub. L. No. 102-171, 105 Stat. 1143 (1991).) Congress has declared that this

recognition requires that the United States protect tribal resources through the trust responsibility. Pub. L. No. 103-454, 108 Stat. 4791 (1994).

The Department further finds no merit in the claim that MICSA extinguished PIN's sovereignty. Federal recognition connotes recognition of a Tribe's inherent sovereignty. Pub. L. No. 103-454, 108 Stat. 4791 (1994). See also Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 694 (1st Cir. 1994). Passage of MICSA did not terminate the Maine Tribes and thus did not extinguish PIN's sovereignty. Instead, as noted in the legislative history, the "settlement strengthens the sovereignty of the Maine Tribes." H. Rep. No. 96-1353 at 15 (1980), reprinted in 1980 U.S.C.C.A.N. 3786, p. 3790. See also Senate Rep. No. 96-957, pp. 14-15 (1980).

It has been asserted that section 1725(h) of the MICSA, a section of the Act which reflects the unique relationship between the Maine Tribes and the State, prevents the application of the trust responsibility and federal case law interpreting its requirements in Maine (25 U.S.C. § 1725(h)). Through this section, Congress provided that the application of federal Indian law (including case law) in Maine can be precluded, but only if such law would affect or preempt the civil, criminal, or regulatory jurisdiction of the State. If Maine's jurisdiction is unaffected, federal law does apply. See H.R. Rep. No. 96-1353 at 19-20 (1980), reprinted in 1980 U.S.C.C.A.N., 3786, pp. 3794-5; Senate Report No. 96-957 at 30 (1980).

In the Department's view, section 1725(h) has no applicability to this situation.² The NPDES program has not been delegated by the United States to the State of Maine; it thus remains a federal program for which EPA is the permitting authority. EPA's consideration of federal law to determine its obligations to the PIN in making the NPDES permit decision, therefore, is required in this case.³

² While the State does have authority under section 401 of the Clean Water Act to certify that a proposed discharge meets its water quality standards, this does not mean that EPA cannot impose a more stringent standard in its permit. 40 C.F.R. § 124.55(c) provides that a state may not condition or deny a certification on the grounds that State law allows a less stringent permit condition.

³ There is also no merit to the claim that, because MICSA is an Act of Congress rather than a treaty, EPA cannot consider federal case law in determining tribal rights and federal obligations. As with a treaty, MICSA is similarly the "supreme law of the Land," and creates rights and liabilities which are virtually identical to those established by treaties. See Parravano v. Babbitt, 70 F.3d 539, 544 (9th Cir. 1995), cert.

Since there exists a trust relationship between the Maine Tribes and the United States, EPA must act as a trustee when taking federal actions which affect tribal resources. When taking such actions, EPA's fiduciary obligation requires it to first protect Indian rights and resources. See Parravano v. Babbitt, 70 F.3d 539 (9th Cir. 1995), cert. denied, 116 S. Ct. 2546 (1996); Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F. Supp. 252 (D.D.C. 1972), rev'd. in part on other grounds, 499 F.2d 1095 (D.C. Cir. 1974), cert. denied, 420 U.S. 962 (1975) (holding that for the Secretary of Interior to fulfill his fiduciary duty to Tribe while determining amount of water to be diverted from dam for benefit of irrigation district and to detriment of tribal fishery in downstream Pyramid Lake, the "Secretary must insure, to the extent of his power, that all water not obligated by court decree or contract with the District goes to Pyramid Lake"); Northern Cheyenne Tribe v. Hodel, 12 Indian L. Rep. 3065 (D. Mont. May 28, 1985) (Rejecting Secretary's argument that national interest in developing coal resources outweighed trust duty and stating that "identifying and fulfilling the trust responsibility is even more important in situations such as the present case where an agency's conflicting goals and responsibilities combined with political pressure asserted by non-Indians can lead federal agencies to compromise or ignore Indian rights.") Thus, fulfillment of EPA's trust responsibility must entail considerations beyond the minimum requirements in the Clean Water Act (CWA) and in MICSA to fully protect the PIN's rights and resources.

2. Interpretation of PIN's fishing rights

The historic treaties between PIN and Massachusetts (Maine then being part of the Massachusetts territory) provide the basis for rights expressly confirmed to the PIN through the Implementing Act and MICSA. As a result, PIN's fishing right has two components - the aboriginal right retained through treaty and confirmed by MICSA, and a statutory right included within the Implementing Act.

a. PIN's confirmed aboriginal fishing rights

Through a series of treaties which culminated in the 1818 Treaty with Massachusetts, the PIN retained the islands and natural resources, including fishing rights, within the Penobscot River, beginning at Indian Island and extending upriver. Congress, through its ratification in MICSA of the Maine Implementing Act which defined the retained Penobscot Reservation, confirmed this reservation of lands and resources, including fishing rights, to the PIN. See 30 M.R.S.A. § 6203(8); 25 U.S.C. §§ 1722(i); 1725(b)(1). While Section 1723(b) of MICSA did extinguish

denied, 116 S. Ct. 2546 (1996); Felix Cohen, Handbook of Federal Indian Law, p. 127 (1982 ed.).

aboriginal title to lands or natural resources given up by the PIN through transactions illegal under the Trade and Intercourse Act, MICSA did not extinguish aboriginal title to lands or natural resources retained by the PIN. Rather, Congress confirmed those retained aboriginal rights to the PIN. According to the legislative history of MICSA, fishing rights are an example of natural resources considered "expressly retained sovereign activities." H.R. Rep. No. 96-1353 at p. 15 (1980), reprinted in 1980 U.S.C.C.A.N. 3786, p. 3791 (emphasis added).

I attach the brief filed by the United States in Maine's Supreme Judicial Court in Atlantic Salmon Federation v. Maine Board of Environmental Protection, 662 A.2d 206 (Me. 1995), in which the United States position regarding the PIN's fishing right is set out. In short, the brief states that:

The Penobscot Nation's right is a reserved right, meaning it was reserved from the greater aboriginal rights of the Nation to the use and occupancy of its territory which had not been validly extinguished under 25 U.S.C. 177, prior to the enactment of the Maine Implementing Act and the federal Settlement Act ratifying its terms. The fishing right, therefore, is not a grant from the state of Maine in the exercise of its sovereign authority over fish and wildlife within its borders; it is a reservation from the aboriginal rights given up by the Penobscot Nation in the settlement which finally extinguished its aboriginal rights.

Brief for the United States as Amicus Curiae, filed before the Supreme Judicial Court of Maine in Atlantic Salmon Federation, et al., v. Maine Board of Environmental Protection, Law Docket No. Ken-94-779, January 27, 1995, (p. 15).

b. PIN's statutory fishing right under the Maine Implementing Act

In addition to PIN's retained aboriginal fishing rights within its Reservation, the Maine Implementing Act expressly confirmed to PIN a fishing right, providing that

the members of the . . . Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance . . .

30 M.R.S.A. § 6207(4). The State of Maine has only a residual right to prevent the PIN from exercising its fishing right in a manner which has a substantial adverse impact on fish stocks in or on adjacent waters - the legislative history compares this residual power to that which other states retain with respect to federal Indian treaty fishing rights. See H.R. Rep. No. 96-1353 at p. 17 (1980), reprinted in 1980 U.S.C.C.A.N. 3786, p. 3793. Indeed, the State of Maine has acknowledged that, in recognition of "traditional Indian activities" such as fishing, preferential

treatment is to be provided to Maine Indians. See letter from Attorney General Richard Cohen to Senator John Melcher (August 12, 1980), reprinted in U.S. Senate, Select Committee on Indian Affairs, Hearings on S. 2829, Proposed Settlement of Maine Indian Land Claims. See also Letter from Maine Attorney General James Tierney to Atlantic Sea Run Salmon Commission Chair William Vail (Feb. 16, 1988), in which the State recognized that the Penobscot Nation possesses a right to take fish from the Penobscot River for consumption in a manner otherwise prohibited by state law, due to the provisions in the Maine-Implementing Act. (Copies attached.)

As provided in the Implementing Act, the PIN fishing right applies within the boundaries of the Penobscot Reservation, as it is defined in the Implementing Act. The Reservation is defined to expressly include the islands in the Penobscot River, beginning at Indian Island and continuing upriver, which were reserved by the PIN in its historic treaties. 30 M.R.S.A. § 6203(8). In those treaties, the PIN ceded lands beginning at the river's edge and extending upland, thereby retaining its rights to the beds and banks of the Penobscot River. See Wilson & Son v. Harrisburg, 107 Me. 207, 210 (1910). Pursuant to the 1818 Treaty, PIN's riparian ownership to the bed and banks of the river is limited only by the commonly recognized right of the public to use the river for navigation. See Pearson v. Rolfe, 76 Me. 380, 386 (1884). In confirming the PIN Reservation, the Implementing Act recognized the retention of PIN's riparian rights to the Penobscot River, including the beds and banks of the river.⁴

As a riparian owner, PIN possesses certain rights under state law which relate to the interpretation of its statutorily-based fishing right. Maine law recognizes that a riparian proprietor, such as the PIN, has a legal right:

to take fish from the water over his own land, to the exclusion of the public. Waters v. Lilley, 4 Pick. (Mass.) 145, 16 Am. Dec., 333. He does not own the water itself, but he has the right to the natural flow of the stream, and the right to the use and benefit of it, as it passes through his land, for all the domestic and agricultural purposes to which it can be reasonably applied, and no proprietor above or below can unreasonably divert, obstruct or pollute it. Waluppa Reservoir Co. v. Fall River, 147 Mass., 548, 554, 18 N.E. 465, 1 L.R.A., 466; Auburn v. Water Power Co., 90 Maine 576-585, 38 Atl. 561, 38 L.R.A., 188.

⁴ Report of the Joint Select Committee on Indian Land Claims Relating to LD 2037, "An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to create the Passamaquoddy Indian Territory and Penobscot Indian Territory," included within Appendix, Senate Select Committee on Indian Affairs, hearing July 1-2, 1980.

The only limitation upon the absolute rights of riparian proprietors in non-tidal rivers and streams is the public right of passage for fish, and also for passage of boats and logs. ... All these rights which the riparian proprietor has in the running streams are as certain, as absolute, and as inviolable as any other species of property, ...

Opinion of the Justices of the Supreme Judicial Court, 118 Me. 503, 507 (1919) (emphasis added).

The PIN Reservation encompasses the area into which Lincoln discharges its outfall. As such and as a riparian proprietor, PIN possesses certain rights under Maine law, including the right to take fish and the right that others not unreasonably pollute the waters overlying those lands.

3. PIN's right to appeal

The Department finds particularly questionable the attempt to have EPA deny the PIN's right of appeal. We have examined the NPDES regulations which define standing to request a hearing in this matter. In the Department's view, PIN is an "interested person" as provided in 40 C.F.R. §124.74, which is the sole indicated criterion for filing a request for hearing. Moreover, the PIN meets the criteria under the definitions for "Indian Tribe" and of "person" under 40 C.F.R. § 124.2 as well. The definition for "Indian Tribe" specifically states that "[f]or the NPDES program, the term 'Indian Tribe' means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation." 40 C.F.R. § 124.2. PIN meets these requirements. There would appear, thus, no grounds on which to contest PIN's status to request an evidentiary hearing in this proceeding.

Thank you for this opportunity to provide the views of the Department. Please contact me if you have any further questions.

Sincerely,



Edward B. Cohen
Deputy Solicitor

Enclosures

cc: The Honorable Francis Mitchell, Chief, PIN
Patty Goldman, Sierra Club Legal Defense Fund
Paul Stern, State of Maine, Office of the Attorney General
Kate Geoffroy, Pierce Atwood

EPA, Office of General Counsel, Washington, D.C.
EPA, Office of Regional Counsel, EPA, Boston
EPA, Indian Desk, Washington, D.C.
Department of Justice, Indian Resources Section
Department of Justice, Office of Tribal Justice
Office of the Regional Solicitor, Boston
Bureau of Indian Affairs, Office of Trust Responsibilities
Bureau of Indian Affairs, Eastern Area Office
Fish and Wildlife Service, u Maine Field Office

Exhibit 18



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240



IN REPLY REFER TO:

DEC 29 1999

Environmental & Cultural
Resources Management
BCCO 00378

The Honorable Olympia Snowe
United States Senate
Washington D.C. 20510-1903

Dear Senator Snowe:

Thank you for your letter of October 13, 1999, on behalf of Lincoln Pulp & Paper Company, and their representative Mr. Dennis McComb. From your letter and the enclosed copies of correspondence provided by Mr. McComb, we understand the reason for his stated frustration in obtaining information. Mr. McComb has requested a Quality Assurance/Quality Control (QA/QC) plan for the study on the Penobscot River currently being conducted by the U.S. Geological Survey with the assistance of the U.S. Environmental Protection Agency. Unfortunately, Mr. McComb believed that the Bureau of Indian Affairs was attempting to prevent the company's representatives from obtaining this information. We want to assure you and Mr. McComb that this is not the case; when the Plan is completed, which we expect to occur in March 2000, we will provide it to your office and Mr. McComb. In anticipation of that release, we want you and Lincoln Pulp & Paper Company representatives to fully understand the Bureau of Indian Affairs responsibilities with respect to this matter and therefore are providing a comprehensive explanation of our activities.

On March 3, 1997, the Penobscot Indian Nation requested the United States, as trustee, to initiate a natural resources damages action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. §§9601-9675. The CERCLA, 42 U.S.C. 9601 *et seq.*, and the Clean Water Act (CWA) 33 U.S.C. 1251-1376, provide that natural resource trustees may assess damages to natural resources and may seek to recover those damages and reasonable costs to assess the damage. The reason for the Penobscot Indian Nation request rests primarily with the fact that since 1987 and continuing to the present, the State of Maine, through the Bureau of Health of the Maine Department of Human Services, issued a fish consumption advisory. This advisory is in effect because concentrations of dioxin found in fish caught in the Penobscot River below Lincoln, Maine, exceed health guidelines. The dioxin and other hazardous substances may have been released by Lincoln Pulp & Paper Company. The level of dioxin in the fish has prevented the Penobscot Indians (the Wabanaki), who have historically subsisted on fish, fiddlehead ferns, and wildlife along the River, from exercising their statutorily recognized right to safely fish in the Penobscot River for individual sustenance and critically important nutritional, cultural, and spiritual needs. The Penobscot Indian Nation currently extends from Indian Island at Old Town, Maine, north along a series of islands in the middle of the Penobscot River, near the high country

around Mount Katahdin. The awe-inspiring Mount Katahdin and the Penobscot River are critical elements in Wabanaki culture; one must understand the relationship of the Wabanaki to the mountain and the River in order to understand the public health problems resulting from contamination of the River.

We have taken the Penobscot Indian Nations request very seriously while at the same time are fully cognizant of the implications of moving forward to conduct a damage assessment and prepare any subsequent claim. We have very carefully considered any expenditure of public funds as we proceeded to evaluate the merits of the Penobscot Indian Nation request.

As a first step, we enlisted assistance from a host of highly qualified scientists, health professionals, and others to fully examine available information with respect to the pollution problems associated with past and ongoing discharges of hazardous substances to the River which may be from Lincoln Pulp & Paper and other industrial dischargers. We petitioned the U.S. Environmental Protection Agency (EPA) to conduct an assessment of release for the Penobscot River. On June 1, 1999, EPA added the Lincoln Pulp & Paper Company to EPA's inventory of known, suspected, or potentially hazardous waste sites. The inventory, called the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) is used to store information on all properties evaluated under the Superfund process. EPA is also conducting an investigation at the Great Northern Paper Mill in Millinocket. The EPA identification number for the Penobscot River is MESFN0102987. Additionally, as a result of our request, the EPA is conducting a Preliminary Assessment/Site Investigation (PA/SI) of the River. We also have requested the EPA to conduct a multi-media environmental compliance inspection of the Lincoln Mill. It is my understanding that this activity is ongoing.

At our request, representatives from the Agency for Toxic Substances and Disease Registry (ATSDR) met with the Penobscot Indian Nation to discuss concerns about cancers and other adverse health impacts from exposure to dioxin and other hazardous substances which may have been released by the aforementioned industries into the Penobscot River. During this consultation, ATSDR reviewed a Cancer Registry for the Penobscot Indian Nation managed by a health professional with experience in hospital-based disease registries. ATSDR determined that health statistics surveys completed by the Center for Disease Control (CDC), Harvard and the Penobscot Indian Nation Health Department reflect increased rates of cancers (primarily lung and cervical; with some qualified increases in colorectal, prostate, and breast cancers); partly attributable to environmental and lifestyle factors such as smoking, alcohol consumption, and diets low in fiber and high in saturated fats. However, Harvard found lung cancers increases in excess of those previously found in populations with high smoking rates. More recent reports by the Penobscot Indian Nation Health Department reflect increases in cancers of the prostate, brain, and kidney. High rates of lung cancers persist. Although CDC found in May 1994 that rates of cancers associated with dioxin exposure were not elevated, the increased rates of all cancers, the strong positive respiratory cancer trend among smokers, and high rates of cancer among females are consistent with findings in epidemiological studies included in ATSDR's updated toxicological profile on dioxin. The high rate of cervical cancers in Penobscots may also be consistent with recent findings in ATSDR's dioxin subregistry.

In addition, ATSDR determined that dioxin contamination may indirectly impact the high rates of Penobscot Indian cancers related to diets high in saturated fats and low in fiber. Fish and fiddlehead ferns, traditional foods low in saturated fats and high in fiber, are no longer available to the Wabanaki due to dioxin contamination. This is an example of where CERCLA's public health and natural resources damage assessment and restoration mandates intersect.

On July 28, 1999, Mr. Jeffery Loman, our Natural Resources Damage Assessment and Restoration Program Coordinator, had the occasion visit the Penobscot Indian Reservation and travel by small boat along the River between Mattanawcook Island and the Lincoln Pulp & Paper Mill. Mr. Loman put the boat in at the first bridge located down river from Lincoln, Maine, and observed a sign (copy attached) warning fisherman of the dioxin. While traveling upriver Mr. Loman reported that he aware of an acute odor, ever increasing as we approached the outfall where Lincoln Pulp & Paper discharges into the River. At the actual discharge, a large amount of foam was being released to the surface of the River (see attached photographs) and upon clearing the foam at the discharge itself, Mr. Loman observed a dark brown substance that appeared to be much like rotting grapefruit spewing out in great quantities. According to Mr. Loman, this dark brown pulp substance appeared heavier than water. Mr. Loman also observed three areas where surface water flowed from the Lincoln Pulp & Paper Company property and obtained a pH by paper of each of these streams, one of which had a pH greater than 10 S.U. Along the bank of this small stream (see attached photograph) Mr. Loman observed a dead bird, possibly a woodcock. My general overall impression of the Penobscot River, based on the observations Mr. Loman reported during this trip are simple; it stinks, it makes you sick, you can't eat the fish, and it's killing the birds. Clearly, it's not the way it should be and the Bureau of Indian Affairs is studying the environmental health of the Penobscot River pursuant to its trust responsibility to the Penobscot Indian people.

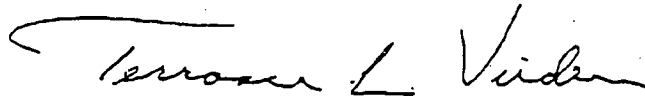
After a careful review of available information concerning the contamination of the Penobscot River, we concluded that it would be prudent to learn the risks and contribution of dioxin and other contaminants in river-bed sediments. One important reason to determine the occurrence and distribution of dioxin in river-bed sediment in the Penobscot River would be to evaluate the significance of this phenomenon as it may relate to the requirement for the fish consumption advisory. It is possible that contamination in the sediment is responsible for the fact that, despite a significant reduction in the release of dioxin by Lincoln Pulp & Paper Company, the levels found in fish tissue by the State of Maine are not thus far declining at a rate that would eliminate the need for the fish advisory. With the assistance of the U.S. Geological Survey, Maine District, and personnel from the U.S. Environmental Protection Agency, Region 1, a study is underway to determine the occurrence and distribution of dioxin and furans in river-bed sediments and fish tissue. As my staff explained to Mr. McComb, after a review and analysis of historical data and determining the study area, the study has three components. The first part involved a geophysical survey of the Penobscot River to determine the location of fine-grained, organic-rich sediments. The second part was the preparation and implementation of a field sampling plan in which fine-grained, organic rich sediments and fish were collected for analysis. The third part is the analysis. The geophysical survey plan and the field sampling plan and the activities for which they were prepared are complete. These two plans will be part of a Quality Assurance Project Plan (QAPP) which is currently being completed and will be subject to approval by the U.S. Environmental Protection Agency Regional Quality Assurance Manager. Once the QAPP is approved, the laboratory analysis results will be validated by experts from the U.S. Environmental Protection Agency.

When the Quality Assurance Project Plan is complete, we will be happy to provide the document to Mr. McComb. Mr. Loman recently contacted Dennis to let him know that we will arrange to have representatives from the U.S. Geological Survey, U.S. Environmental Protection Agency, Penobscot Indian Nation and the Bureau of Indian Affairs meet with him and other representatives of Lincoln Pulp & Paper Company explain all of the aspects of the Quality Assurance Project Plan, the project itself and any human health and ecological risk assessment activities that will commence once the data validation is complete. I would also extend an invitation to any member of your staff that would be interested in participating in this meeting. If a member of your staff is interested in attending, please have them contact me prior to March 1, 2000, the date we anticipate completion of the QAPP.

We are encouraged by the statement in the letter from Mr. McComb to Franklin Keel, Bureau of Indian Affairs, Eastern Regional Director, that Lincoln Pulp & Paper Company is interested in participating in the project. This is the first indication that we have had that Mr. McComb was interested in more than simply receiving a copy of the plan. We certainly welcome any meaningful assistance in solving this pollution problem. We are hopeful that the meeting that we will participate in to provide the information that Mr. McComb is requesting will serve to commence a future relationship between Lincoln Pulp & Paper Company and all involved government agencies working to address this important matter in full measure.

When the Quality Assurance Project Plan is complete and approved, I will forward a copy to your office. In the meantime, should you have any questions about this matter, please contact Jeffery Loman at (202) 208-5474.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas L. Vidan". The signature is fluid and cursive, with a long horizontal line extending from the start of the name.

Director, Office of Trust Responsibilities

Exhibit 19

AFFIDAVIT OF DANIEL KUSNIERZ

Daniel Kusnierz hereby deposes and states, under oath, as follows:

1. My name is Daniel Kusnierz, and I serve as Water Resources Program Manager at the Department of Natural Resources of the Penobscot Nation (the "Department"). I am a Biologist, and my work for the Department includes the development of designated use criteria for water quality standards to protect the interests of the Penobscot Nation, including sustenance fishing and cultural practices, within the Penobscot River.
2. As part of its work in developing the Nation's designated use criteria, the Department has undertaken a review of Maine's water quality standards, which the State of Maine (the "State" or "Maine") deems applicable within those portions of the Penobscot River that encompass the Penobscot Indian Reservation, to determine whether Maine's standards protect the interests of the Penobscot Nation.
3. The Penobscot Nation's unique interests within the Penobscot River are not met by Maine's water quality standards, nor by its management programs or enforcement practices. I set forth below some examples of specific items that are inadequate to protect the uses of the Penobscot River by tribal members.
 - A. *The Penobscot River has been contaminated by dioxin-containing effluent from mill discharges into the River, preventing Penobscot Tribal members from engaging in sustenance fishing.* The Penobscot River, from the site of pollution discharge by Lincoln Pulp & Paper (LP&P), southward, including the Penobscot Indian Reservation has been contaminated by dioxin and dioxin-like toxic substances, which have accumulated in the tissue of fish consumed by members of the Penobscot Nation. As a result of this contamination, members of the Penobscot Nation have refrained from sustenance fishing and gathering aquatic and other plants within the Penobscot Indian Reservation.
 - B. *The State of Maine does not recognize tribal member sustenance fishing within the Penobscot Indian Reservation as a designated use of the river.* The State's designated use of "fishable" does not protect the ability of Penobscot Nation tribal members to fish for sustenance. The Penobscot Nation is drafting its designated uses to protect tribal member sustenance fishing within the portions of the river that encompass the Penobscot Indian Reservation.
 - C. *The State of Maine does not recognize tribal member consumption of aquatic plants and animals within the Penobscot Indian Reservation as a designated use of the river.* Penobscot tribal members collect and consume aquatic foods, including snapping turtles, muskrats, fiddlehead ferns, and medicinal plants from the river. These traditional practices are an important component of the

culture and identity of the Penobscot Indian people and have been negatively affected by pollution of the river. The Penobscot Nation is drafting its designated uses to support the generation and consumption of healthy aquatic plants and animals to protect these important traditional practices.

- D. *The State's management of discharge licenses cannot verify instream water quality.* Under Maine's pollution discharge permitting program, the State assumes complete dilution of effluents at point of discharge. Such dilution does not occur, particularly where LP&P discharges its wastes into the Penobscot Indian Reservation. The Penobscot Nation's islands adjacent to that waste discharge confine the plume to the eastern side of the river and prevent the effluent from efficiently mixing with the flow. The dilution ratio used by the Maine Department of Environmental Protection ("DEP") for calculating instream levels is based on flows of the entire width of the river, not the flow actually available to dilute pollution at point of discharge. Incomplete mixing of the LP&P waste therefore exposes river water, sediments, islands, and aquatic resources within the Penobscot Indian Reservation to pollutant levels that render Maine's water quality criteria artificial. The protection of water quality within the Penobscot Indian Reservation requires specific water quality-based limits, verified by regular instream monitoring of color, thermal loading, and toxic pollutants, all of which the Penobscot Nation has the capacity to develop and implement.
- E. *The State's water quality standards do not have narrative criteria or numeric nutrient criteria to protect the Penobscot Indian Reservation from episodic algae blooms.* Episodic algae blooms occur in the Penobscot River's main stem and west branch. These blooms can affect dissolved oxygen levels and decrease light penetration in the Penobscot Indian Reservation, thereby retarding growth of aquatic vegetation. Maine has no established nutrient criteria to serve as the basis for effluent limits or monitoring to prevent such blooms. The Penobscot Nation has the capacity to develop and implement such criteria as the basis for preventing these harmful episodic algae blooms within the Penobscot Indian Reservation.
- F. *Maine's thermal loading standards do not address cumulative thermal impacts upon aquatic life.* Numerous adult Atlantic salmon perish from exposure to lethal temperatures within the portions of the Penobscot River encompassing the Penobscot Indian Reservation and to the south. If the river is to support this species, a fish that is important for tribal sustenance and culture, it is critical that water temperatures be lowered. The most logical method of doing so is to control thermal loadings by wastewater dischargers. Maine's temperature rules allow each discharger to increase river water temperature by .5°F. Considering the number of dischargers within the Penobscot River watershed, cumulative temperature increases likely harm Atlantic salmon. The

Penobscot Nation has the capacity to address this by developing a temperature model, using water quality data collected over several years, on which to base more appropriate temperature controls.

- G. *Maine has failed to establish a Total Maximum Daily Load ("TMDL") for removing the Penobscot River from the Clean Water Act's ("CWA") list of waters that fail to meet state water quality standards.* The waters of the Penobscot Indian Reservation have been contaminated with dioxin and other toxic chemicals from the wastewater discharges of LP&P and other industrial sources. As a result, the portions of the Penobscot River that constitute the Penobscot Indian Reservation fail to attain state water quality standards and CWA water quality goals of "fishable", and must be listed as such under federal law.
- H. *Maine has failed to enforce its narrative limits for foam in the Penobscot Indian Reservation.* The Maine discharge license for LP&P provides that the effluent must not contain visible foam that would impair designated uses of the receiving waters. The discharge from LP&P often contains significant quantities of visible foam, harming tribal members' use of the river for canoeing and gathering aquatic resources.

Dated: _____

2/28/00



Daniel Kusnierz

Personally appeared the above-named, Daniel Kusnierz, who stated, under oath, that the foregoing facts are true, upon his own personal knowledge, information, or belief, before me,

Dated: _____

2-28-00



Notary Public

OFFICIAL SEAL
Linda Socoby
Notary Public-State of Maine
My Commission Expires May 18, 2006

ALL INFORMATION
CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10/10/2001 BY 60322 UCBAW

Exhibit 20

MAINE INDIAN CLAIMS SETTLEMENT

Public Hearing Held in the Main Auditorium of the Augusta Civic Center, Augusta, Maine, at 10:00 A.M., on March 28, 1980.

PRESENT

Sen. Samuel H. Collins, Jr.

Senate Chairman

Rep. Bonnie Post

House Chairman

Rep. Paul E. Violante

Rep. Michael D. Pearson

Rep. Elizabeth E. Mitchell

Rep. Barry J. Robbins

Rep. Charles G. Dow

Sen. Gerard P. Conley

Sen. Redmond

Rep. Donald A. Stroot

Rep. Darryl W. Brown

Rep. Robert J. Whelan

Rep. Charlotte E. Hall

Journalist

Reporter

Public Affairs

second step is the call a hearing, the third step is to act if he finds sufficient grounds to act.

REPRESENTATIVE GILLIS: This condition could exist for months, maybe years, before it's resolved.

MR. PATTERSON: Well, it depends how fast he wants to act. There are no particular deadlines set in here for notice, adequacy of notice. So long as it's reasonable notice.

REPRESENTATIVE GILLIS: But he does not have the authority to take immediate direct action.

MR. PATTERSON: No, he does not.

SENATOR COLLINS: Senator Redmond.

SENATOR REDMOND: Mr. Patterson, the State denies to the municipalities the right to promulgate to make any regulations regarding the fisheries and the wildlife in their own municipalities. That question has come up several times on the Committee on Fisheries and Wildlife and now as I understand it, in these areas that we are discussing today, the Indians will have the privilege of passing their own regulations in those areas. Now, isn't that discrimination against the white man, to disallow him to pass his own laws in his municipalities and allow another group of people to be able to do that?

MR. PATTERSON: Well, let me answer that in part and then ask the Attorney General if he wants to respond to it. First of all, the State currently lets Indians and the Legislature currently lets Indians engage and regulate their own hunting and fishing on their on reservations. That's a current state law. That's in Title 12, §7076. That was a right which the State gave to the Indians on their reservations some years ago.

So in large measure, the policy embodied here was long ago recognized by the Legislature of the State. That's why the right to sustenance hunt and fish on reservations which is found in Sub-§4 on Page 9, is not such a major departure from current policy. As to whether or not that's discriminatory, the entire Act represents a compromise in many respects. This is one of the areas in which there was vigorous negotiation. I think as the Attorney General stated quite clearly in his opening remarks and remarks to the Legislature last week, there were certain areas in which the State felt it appropriate in the negotiations to recognize traditional Tribal interests. This is certainly an area in which the State has long recognized as a general matter particularized cultural interests of the Indian Tribes in Maine. Indeed, if you go back to the original agreements that were negotiated back in the 1700's and 1800's, you will find in some of them preservation at that time of particular kinds of hunting and fishing rights. So it is not as if the idea of having these particular kinds of rights in Indians is particularly unique nor is it unique to the State of Maine. As a general proposition, States elsewhere in the country that have Indian Land in those states are unable to exercise their regulatory authority over Indian hunting and fishing practices on their lands. This is a measure of remedial state authority which to my knowledge is not found in any other state in the country and I would suspect that those states which are having controversies with their Indian Tribes would deeply value the kind of authority that we have negotiated in this agreement.

SENATOR REDMOND: Well, basically this sounds very reasonable, however, this question keeps popping up in my mind, this whole issue is-- in order to try and settle this case of discrimination on the one side, however,

Exhibit 21

Shad Island Agreement. 1834.

Book 62, page 455

Know all men by these Presents That we the undersigned Governor, Councillors, and Chief men of the Penobscot Tribe of Indians acting for and in behalf of said Tribe and in conformity to the customs and wayes of said tribe and in consideration of the sum of one thousand Dollars to be paid by Richard H. Bartlett of Bangor and James Purrinton of Orono both in the County of Penobscot and State of Maine Gentlemen to us paid for the benefit of said Tribe, the receipt whereof we do hereby acknowledge, have remised, released sold and forever quit-claimed, and do for ourselves and our Tribe, our and their successors by these presents, remise, release sell and forever quit claim unto the said Bartlett and Purrinton their heirs and assigns all the right, title and interest of said Tribe in and to the following described Islands and ledges on the westerly side of the Old Town falls in the Penobscot River viz. Island numbered four according to Gen. Joseph Treat plan of same otherwise called and known by the name of Pine island - Also one other island on the head of said Old Town falls commonly called and known by the name of Shad Island. Also one other island on the head of said falls being near to, and next easterly from said Shad Island. Also a certain ledge being above said Falls and northerly of said Shad Island and lying between said Shad Island and the southerly point of Indian Oldtown Island meaning and intending to release the right of said Tribe to said Islands and ledges and all the land covered with water and all the ledges which would be included between a line drawn from the Eastern extremity of Pine Island in a northerly direction to the Southeastern extremity of said small island east of said line to Shad Island thence around the eastern shore of said Small Island to the head of the same - Thence directly to northerly extremity of the Ledge above mentioned and the easterly line of the privilege of Samuel Veazie as conveyed to him by Jackson Davis. Reserving however the right of taking fish on the Eastern shore of said Shad Island and the small Island east of Shad Island in the season of taking Shad and Alewives in said river and the same is hereby reserved to said Penobscot Tribe of Indians as their exclusive right and privilege. To have and to hold the aforementioned premises with all the privileges and appurtenances thereunto belonging to them the said Bartlett and Purrinton their heirs and assigns forever, so that neither we the said Governor and Councillors and Chief men of said tribe nor any member or members of said Tribe their or our heirs or successors or any person or persons claiming from or under us or them or in the name, right or stead of us or them. shall or will by any means have or demand any right or title to the aforesaid premises or their appurtenances or to any part or parcel thereof forever. In witness whereof we the

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aforesaid Governor, Councillors and Chief men of said
Penobscot Tribe of Indians for ourselves and in behalf of
said Tribe as aforesaid have hereunto set our hands and
seals this third day of July Anno Domini Eighteen hundred
and thirty four. Signed, Sealed and delivered in presence
of A. B. Gilman
Joseph Pollard

